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LETTERS
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96TH CONGRESS }
2d Session }

SENATE

{ EXECUTIVE
{ A

TREATY OF FRIENDSHIP WITH THE REPUBLIC OF KIRIBATI

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI, SIGNED AT TARAWA ON SEPTEMBER 20, 1979

JANUARY 24, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

★(Star Print)

82-014 O—82——1 (Pt. 1) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 24, 1980.*

To the Senate of the United States:

I transmit herewith, for advice and consent of the Senate, the Treaty of Friendship between the United States of America and the Republic of Kiribati. The primary purpose of the Treaty is to settle on terms acceptable to both governments the conflicting claims to 14 islands in Kiribati (formerly the Gilbert Islands) in the South Pacific Ocean, and to establish a regime of cooperation, particularly regarding security arrangements and fisheries. The report of the Department of State is enclosed for the information of the Senate.

The Treaty and Agreed Minute meet the practical interests of both countries and will satisfy the desire of the Kiribati people that their sovereignty over 14 of the islands in their country be unencumbered by a conflicting claim of the United States.

The Treaty will protect United States interests by assuring nondiscriminatory future access to Kiribati fishing grounds which supply fish to the canneries of America Samoa. The Treaty also promotes the interest of American Samoa by encouraging joint ventures using the facilities constructed by the United States on Canton Island. As well, any military use of the islands by third parties is to be a subject of consultations with the United States, and third parties may not use United States-built facilities without United States agreement.

The Treaty will further United States foreign policy and security interests in promoting peace, security and development of the region. I recommend that the Senate give early consideration to the Treaty and give its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 17, 1979.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit the Treaty of Friendship between the United States of America and the Republic of Kiribati, signed at Tarawa on September 20, 1979, with the recommendation that you transmit it to the Senate for its advice and consent to ratification.

Under the terms of the Treaty the United States renounces all claims to sovereignty over the islands of Canton, Enderbury, Hull, Birnie, Gardner, Phoenix, Sydney, McKean, Christmas, Caroline, Starbuck, Maldin, Flint and Vostok.

The British originally asserted sovereignty to these islands at the end of the nineteenth century, and in 1937 the boundaries of the Gilbert and Ellice Islands Colony were extended to encompass the 14 islands in question. The United States did nothing to contest British sovereignty until 1939. That year the United States, in a diplomatic note to the United Kingdom, formally asserted a claim to the 14 islands in the Phoenix and Line Island groups and 11 other South Pacific islands.

The United States claim to these islands was initially based on a combination of discovery and the issuance of United States guano mining bonds in the nineteenth century. In addition, since that time, United States citizens have lived on some of the islands. During World War II and the late 1950's the United States built and manned military bases on Christmas Island. From 1937 until mid-1979 United States personnel have been posted on Canton Island.

To resolve the diplomatic dispute between the United States and the United Kingdom over conflicting claims to Canton and Enderbury Islands, the two Governments signed an agreement on April 6, 1939, providing for joint administration without prejudice to the claim of either party. In 1970 the United States Air Force became the sole administrator of Canton, Enderbury and Hull Islands under a second agreement with the British, but in recognition of the continuing British interest in the islands, the United States agreed to compensate the United Kingdom annually for ten years.

Following a Department of Defense decision on March 19, 1979, that the Canton complex was no longer needed, Air Force contract personnel left the islands just before Kiribati independence on July 12, 1979. For the period between the departure of the Air Force until the date upon which the new treaty enters into force, the Governor of American Samoa has been appointed as the agent for the Department of the Interior with responsibility for Canton Island and there is an American Samoan representative on the island.

The negotiations which led to the current Treaty of Friendship were undertaken with the United Kingdom and the Government of Kiribati in preparation for the independence of Kiribati in July 1979.

The terms of the Treaty accord with the interest and desires of both parties and promote United States foreign policy objectives in the South Pacific. The primary interests of the United States in the region are to promote a secure and peaceful South Pacific, to assure nondiscriminatory future access to the marine resources of the region, and to assure a continued supply of fish from Kiribati waters to the canneries in American Samoa in order to maintain a viable economy in America Samoa. The Kiribati Treaty protects each of these interests.

Article 1 of the Treaty recognizes the sovereignty of the Republic of Kiribati over the islands in question.

Article 2 provides for consultation on matters of mutual concern and need and specifies that any military use of the islands by third parties shall be the subject of such consultations. Under Article 3, any future U.S. use of the American-built facilities on Canton, Enderbury and Hull will be in accordance with agreements to be negotiated between the two Governments. The Government of Kiribati also agrees that the facilities will not be made available to third parties for military purposes except with the agreement of the Government of the United States.

Article 4 provides for consultation regarding matters relating to conservation, management and utilization of fisheries of mutual interest. The two governments also agree to encourage and facilitate cooperative arrangements and fishing ventures.

Article 5 provides for cooperation between the two countries in protecting the unique material and cultural resources of Kiribati, and encourages scientific research and cultural exchanges.

In Article 6 the parties agree to encourage joint utilization of the facilities constructed by the United States on Canton.

Under Article 7, the Treaty will be subject to termination by either party on six months notice after it has been in force for ten years. Article 1, which contains the renunciation by the United States of claims to the 14 islands, is not subject to termination.

In an Agreed Minute to the Treaty, the Government of Kiribati gives its assurances that applications by United States flag vessels or vessels supplying canneries in American Samoa for licenses to fish within Kiribati fishery limits will be sympathetically considered without discrimination and without regard to fishing methods.

By renouncing its claims to the disputed islands, the United States removes a potentially disruptive dispute with this developing nation and demonstrates to the South Pacific nations that we seek a close, friendly and cooperative relationship with the independent states of the region.

Respectfully submitted,

CYRUS VANCE.

TREATY OF FRIENDSHIP BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF KIRIBATI

The Government of the United States of America and the Government of the Republic of Kiribati,

Desirous of maintaining the bonds of peace and friendship traditionally existing between the people of the United States and the people of Kiribati;

Acknowledging that the United States has hitherto claimed sovereignty over the islands of Canton (Kanton), Enderbury, Hull (Orona), Birnie, Gardner (Nikumaroro), Phoenix (Rawaki), Sydney (Manra), McKean, Christmas (Kiritimati), Caroline, Starbuck, Malden, Flint and Vostok;

Conscious of their mutual interest in a stable and peaceful Pacific;

Have agreed as follows:

ARTICLE 1

The Government of the United States recognizes the sovereignty of Kiribati over the islands of Kiribati named in the preamble as a part of the territory of the sovereign Republic of Kiribati.

ARTICLE 2

The two Governments, in the spirit of friendship existing between them, shall consult together on matters of mutual concern and interest in time of need, and, in particular, to promote social and economic development, peace, and security in the Pacific region. Any military use by third parties of the islands named in the preamble shall be the subject of such consultations.

ARTICLE 3

Any future use by the Government of the United States of facilities constructed by it on Canton (Kanton), Enderbury, and Hull (Orona) shall be in accordance with agreements to be negotiated between the two Governments. The Government of Kiribati agrees that these facilities shall not be made available to third parties for military purposes except with the agreement of the Government of the United States.

ARTICLE 4

The two Governments recognize the interest of their peoples in close cooperation for their mutual benefit in economic development relating to fisheries off their coasts. The two Governments agree to consult directly, and/or through appropriate regional organizations to which both are parties, regarding matters relating to the conservation, management, and utilization of fisheries of mutual interest. They agree also to encourage and facilitate cooperative arrangements and fishing ventures of mutual interest and benefit. For the purpose of entering into such arrangements the two Governments shall promote discussions between their nationals and appropriate governmental entities.

ARTICLE 5

The Governments of the United States and Kiribati will use their best efforts to encourage cooperation between the two countries in protecting the unique natural and cultural resources of Kiribati, and, for their mutual benefit, to encourage and facilitate scientific research activities and cultural exchanges.

ARTICLE 6

The Governments of the United States and Kiribati agree to encourage joint utilization of facilities constructed by the United States on Canton (Kanton) for the mutual benefit of their nationals and/or appropriate governmental entities.

ARTICLE 7

(a) This Treaty shall be subject to ratification by the parties and shall enter into force on the date of the exchange of instruments of ratification.

(b) This Treaty shall remain in force for ten years and shall thereafter be subject to termination by either party upon six months notice; provided, however, that Article 1 of this Treaty shall not be subject to termination.

Done in duplicate, in the English and Kiribati languages of which the English shall be the authentic text, at Tarawa, this 20th day of September, 1979.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA: WILLIAM BODDE, JR.	FOR THE GOVERNMENT OF THE REPUBLIC OF KIRIBATI: IEREMIA TABAI

AGREED MINUTE

In the spirit of the Treaty of Friendship signed today by the Government of the United States of America and the Government of the Republic of Kiribati, and in particular Article 4, the Government of Kiribati assures the Government of the United States that application by United States flag vessels or vessels supplying canneries in American Samoa for licenses to fish within Kiribati fishery limits will be sympathetically considered without discrimination and without regard to fishing method.

Conservation measures of the Government of Kiribati would have to be observed.

The Government of Kiribati further advises the Government of the United States that it is the current policy of the Government of Kiribati not to grant exclusive licenses.

○

96TH CONGRESS
2d Session

SENATE

EXECUTIVE
B

1978 PARTIAL REVISION OF THE RADIO REGULATIONS (GENEVA 1959)

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PARTIAL REVISION OF THE RADIO REGULATIONS (GENEVA 1959) SIGNED ON BEHALF OF THE UNITED STATES AT GENEVA, MARCH 5, 1978

JANUARY 24, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 2) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *January 24, 1980.*

To the Senate of the United States:

I transmit herewith the Partial Revision of the Radio Regulations (Geneva 1959)—signed on behalf of the United States at Geneva on March 5, 1978—for the advice and consent of the Senate.

I am also transmitting, for the Senate's information, the Department of State's report on the Partial Revision.

The primary purpose of the Revision is to update the Radio Regulations to take into account the present technological state of the art and the increasing demands on these frequencies.

The Partial Revision (except for the Frequency Allotment Plan itself, which will take effect at 0001 hours GMT on February 1, 1983) went into force on September 1, 1979, for Governments that had notified the Secretary General of the International Telecommunication Union of their approval by that date. I believe that the United States should be a party to the Partial Revision, and it is my hope that the Senate will take early action on the Revision and give its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUMMITTAL

Department of State,
Washington, December 18, 1979.

The President,
The White House.

The President: I have the honor to submit to you with a view to its transmission to the Senate for advice and consent to ratification the Partial Revision of the Radio Regulations (Geneva 1959) signed on behalf of the United States at Geneva, March 5, 1978.

The Partial Revision was adopted at the World Administrative Radio Conference on the Aeronautical Mobile (R) Service, held under the auspices of the International Telecommunication Union at Geneva February 6–March 5, 1978.

The texts of the Partial Revision are contained in a bound volume, designated Final Acts, which also includes resolutions and recommendations which do not require action with a view to ratification on the part of the United States.

The Radio Regulations (Geneva 1959) were transmitted to the Senate on June 9, 1960 (S. Exec. I, 86th Congress, 2d session) and, after ratification, entered into force for the United States on October 23, 1961 (TIAS 4893, 12 UST 2377). The Radio Regulations were revised with respect to the Aeronautical Mobile (R) Service at Geneva April 29, 1966.

Those revisions were submitted to the Senate (S. Exec. H, 90th Congress, 1st session) and, after ratification, entered into force for the United States on August 23, 1967 (TIAS 6332, 18 UST 2091).

The Partial Revision submitted herewith further revises the 1959 Radio Regulations with respect to the Aeronautical Mobile (R) Service. The principal features of the Partial Revision are consistent with United States interests and are summarized below:

1. A revision of the existing Frequency Allotment Plan, to be known as Appendix 27 Aer2 to the Radio Regulations.
2. A revised Plan based on single sideband technology for voice communication, providing spectrum utilization more than twice as efficient as the out-moded double sideband mode on which the existing Plan is based.
3. A revision of the borders of three categories of existing aeronautical communication areas, i.e., Major World Air Route Areas, Regional and Domestic Air Route Areas, and the regional air meteorological broadcast areas.
4. The establishment of five worldwide allotment areas from which operators will be able to communicate with their aircraft in operations anywhere in the world on matters of flight regularity and safety, subject to the condition that telecommunication administrations may regulate such communications.

The Partial Revision (except for the Frequency Allotment Plan itself which will take effect at 0001 hours GMT on February 1, 1983) entered into force on September 1, 1979 for Governments which, by that date, had notified the Secretary General of the International Telecommunication Union of their approval thereof.

The Federal Aviation Administration, the Federal Communications Commission and the National Telecommunications and Information Administration concur in the Department's recommendation that the Partial Revision submitted herewith be transmitted to the Senate for its consideration and approval at an early date.

Respectfully submitted.

CYRUS VANCE.

INTERNATIONAL TELECOMMUNICATION UNION

FINAL ACTS

of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service Geneva, 1978

COPIE
certifiée conforme à l'original
Genève, le 17 NOV. 1978
Le Secrétaire général
de l'Union internationale des
télécommunications

Mohamed MILI

Geneva 1978

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ABBREVIATIONS

The following abbreviations are used in the Annexes to indicate the nature of amendments made in the partial revision of the Radio Regulations:

Symbol	Meaning
MOD	Modification
ADD	Addition

Note: **If a modification affects only the drafting of a number, without changing the substance, the following symbol is used:**

(MOD)

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PARTIAL REVISION OF THE RADIO REGULATIONS [1]

The Plenipotentiary Conference, Malaga-Torremolinos, 1973, at its 25th Plenary Meeting, approved the principle of convening a World Administrative Radio Conference on the Aeronautical Mobile (R) Service subject to receipt of a sufficient number of requests from administrations of the Members of the Union.

At its 29th Session (1974) the Administrative Council examined requests to convene the Conference from four countries Members of the Union. It also took note of a letter from the Secretary-General of the International Civil Aviation Organization (ICAO) on this question. The Administrative Council instructed the Secretary-General to request Members to inform him of their views.

At the 30th Session (1975) the Administrative Council examined the Secretary-General's report on this enquiry and, after consulting the Members of the Union, adopted Resolution No. 763 containing the agenda of the Conference and stipulating that it should meet in Geneva on 7 March 1977 for a maximum duration of four weeks.

At its 31st Session (1976), having examined the budget and in view of financial difficulties, the Administrative Council proposed to Members of the Union that the Conference be postponed until 6 February 1978, that its duration should not exceed four weeks and that the agenda item concerning the re-arrangement of the Radio Regulations be transferred to the World Broadcasting-Satellite Administrative Radio Conference (Geneva, 1977). Those proposals were approved by the Members of the Union.

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service accordingly convened on the appointed date, and considered and revised the relevant parts of the Radio Regulations in conformity with its agenda. Particulars of this revision are given in Annexes 1 and 2 hereto.

The revised provisions of the Radio Regulations shall form an integral part of the Radio Regulations which are annexed to the International Telecommunication Convention. These revised provisions shall come into force on and from 1 September 1979, except for the Frequency Allotment Plan for the aeronautical mobile (R) service contained in Appendix 27 Aer2 which shall come into force at 00.01 hours G.M.T. on 1 February 1983. The provisions of the Radio Regulations which are cancelled, superseded or modified by these revised provisions shall be abrogated on the dates of the entry into force of the revised provisions.

The delegates signing this revision of the Radio Regulations hereby declare that, should an administration make reservations concerning the application of one or more of the revised provisions of the Radio Regulations, no other administration shall be obliged to observe that provision, or those provisions, in its relations with that particular administration.

---

[1] Namely the Radio Regulations, Geneva, 1959, as partially revised by the Extraordinary Administrative Radio Conference to Allocate Frequency Bands for Space Radiocommunication Purposes (Geneva, 1963), by the Extraordinary Administrative Radio Conference for the Preparation of a Revised Allotment Plan for the Aeronautical Mobile (R) Service (Geneva, 1966), by the World Administrative Radio Conference to deal with matters relating to the Maritime Mobile Service (Geneva, 1967), by the World Administrative Radio Conference for Space Telecommunications (Geneva, 1971) and by the World Maritime Administrative Radio Conference (Geneva, 1974).

Members of the Union shall inform the Secretary-General of their approval of the revision of the Radio Regulations by the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978). The Secretary-General shall inform Members promptly regarding receipt of such notifications of approval.

In witness whereof the delegates of the Members of the Union represented at the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) have signed in the names of their respective countries this revision of the Radio Regulations in a single copy which will remain in the archives of the International Telecommunication Union and of which a certified copy will be delivered to each Member of the Union.

Done at Geneva, 5 March 1978.

For the Republic of Afghanistan:

ABDUL-RAZEQ NAQARAR

For the Algerian Democratic and Popular Republic:

N. BOUHIRED
M. BENCHEMAM
M. AIT BENHAMOU

For the Federal Republic of Germany:

R. BINZ
K. SPINDLER

For the People's Republic of Angola:

JOSÉ GUALBERTO DE MATOS

For the Kingdom of Saudi Arabia:

IBRAHIM AHMED OBAID
ABDULRAHMAN A. DAGHISTANI
SAEED ABDULLA AL-FARHA AL-GHAMDI
HAIDAR ABDULLAH HUSSEIN
HAMID MOHAMMED OMAIRY

For the Argentine Republic:

MARCELO OTERO MOSTEIRIN

For Australia:

P. D. BARNES
KEITH H. KING

For the State of Bahrain:

YOUSIF AHMED SULMAN

For the People's Republic of Bangladesh:

A. M. AHSANULLAH
S. A. MOTALIB

For Belgium:

THEYS A. V. G.
GODART H. F. J.

For the Byelorussian Soviet Socialist Republic:

P. AFANASIEV

For the Republic of Bolivia:

CLOVIS VELAZQUEZ ALQUIZALETH

For the Federative Republic of Brazil:

PAULO RICARDO HERMANO BALDUINO

For the People's Republic of Bulgaria:

IVAN IGNATOV

For the United Republic of Cameroon:

VICTOR I. N. VEGA
JEAN ESSESSE-DIKONGUE

For Canada:

E. D. DuCHARME

For Chile:

JAIME LAGOS

For the People's Republic of China:

WANG NAI-TIEN

For the Republic of Colombia:

ORLANDO GALLO SUÁREZ
ALIRIO GUTIÉRREZ DÍAZ

For the Republic of Korea:

SHINYONG LHO
CHANG SOO KO
JEONG JAI IM
HYUN DUK KIM
JONG SOUNG KIM

For the Republic of the Ivory Coast:

GNONSOA KOMOANGNAN JEAN

For Cuba:

FRANCISCO RODRIGUEZ ACOSTA

For Denmark:

P. V. LARSEN
V. O. BENDTSEN
E. BIRCH

For the United Arab Emirates:

ALI SALIM AL-OWAIS
HALIM J. FANOUS

For Ecuador:

CESAR LARA

For Spain:

MANUEL VALBUENA GRANADOS
LUIS GARCIA-CEREZO
JOSÉ L. BARRANCO ALVAREZ

For the United States of America:

BETTY C. DILLON
CARLTON A. KEYS

For Ethiopia:

TESFATSION SEBHATU
MITIKU AYANA

For Finland:

T. HAHKIO
J. KARJALAINEN

For France:

CHEF MAURICE
DHENIN CHRISTIAN-JACK

For the Gabon Republic:

ASSOKO-ALLOGO-ANDRE

For Greece:

ANDRÉ S. METAXAS
C. HAGER
G. STAMATOPOULOS
N. BENMAYOR

For the Republic of Guatemala:

OLMEDO AISAR VASQUEZ TOLEDO
EDUARDO RIVERA PÉREZ

For the Republic of Guinea:

DIALLO MAMADOU SALIOU

For the Republic of Upper Volta:

KABA YOUSSOUF

For the Hungarian People's Republic:

Dr. HORVÁTH LAJOS

For the Republic of India:

T. V. SRIRANGAN
Dr. S. C. MAJUMDAR
M. D. JOSHI
BISWAPATI CHAUDHURI

For the Republic of Indonesia:

TH. A. PRATOMO
F. M. JASIN

For Iran:

A. HAKIMIAN

For Ireland:

O'NEILL DANIEL J.

For Italy:

PETTI A.

For Japan:

KIKKAWA KYUSO
FUJIOKA MASAYOSHI

For the Republic of Kenya:

S. A. MALUMBE
I. N. ODUNDO
S. M. CHALLO

For the State of Kuwait:

ABDULRAHMAN S. ALDUWAISAN
FAISAL MANSOUR AL TAHOO
AHMAD AL-HASAWI
SAMI KHALED AL-AMER

For the Republic of Liberia:

SAMUEL H. BUTLER, SR

For the Socialist People's Libyan Arab Jamahiriya:

MOHAMED SALEH ALSABEY

For Malaysia:

K. P. RAMANATHAN MENON

For the Kingdom of Morocco:

HASBI BOUCHAÏB

For Mauritius:

J. SOOBARAH

For the Islamic Republic of Mauritania:

MANGASSOUBA A.

For Mexico:

IGNACIO VALADEZ GUTIERREZ

For the Federal Republic of Nigeria:

RAPHAEL EJOH NATHAN INOMA
JONATHAN APIAFI HART

For Norway:

L. GRIMSTVEIT
ARNE BØE
THORMOD BØE

For New Zealand:

ROBERT JOHN BUNDLE
ROSS WILLIAM BECKER
RAYMOND KENNETH PEARSON

For the Islamic Republic of Pakistan:

S. H. QURESHI
MUSHTAQ AHMAD

For the Republic of Panama:

ISMAEL GARCÍA GRIMALDO
AQUILINO P. VILLAMONTE RAMOS

For Papua New Guinea:

G. H. RAILTON
S. KULUPI
C. R. EMERY

For the Republic of Paraguay:

ING. MIGUEL HORACIO GINI ESPINOLA
HECTOR RAUL VEGA ALMIRON

For the Kingdom of the Netherlands:

W. DAMMERS
A. R. VISSER

For the Republic of the Philippines:

BRILLANTES HORTENCIO J.
CARREON CEFERINO S.
SAN JUAN HERACLIO L.
MARASIGAN RICARDO B.

For the People's Republic of Poland:

KONRAD KOZŁOWSKI
HALINA SMOLEŃSKA

For Portugal:

ADRIANO DE CARVALHO
DOMINGOS FRANCO

For the State of Qatar:

En. ABDULLAH ALI OMER AL-MANNAI

For the Syrian Arab Republic:

HAITHAM HABBAB
HAYAN MAHFOUZ

For the German Democratic Republic:

CALOV

For the Democratic People's Republic of Korea:

KIM RYE HYON

For the Ukrainian Soviet Socialist Republic:

V. SAVANTCHUK

For the Socialist Republic of Roumania:

CONSTANTIN CEAUŞESCU

For the United Kingdom of Great Britain and Northen Ireland:

D. E. BAPTISTE
G. W. NORTH

For the Democratic Republic of Sao Tome and Principe:

FERNANDO RAMOS DAS NEVES
DEOLINDO COSTA

For the Republic of the Senegal:

ALIOUNE MBODJI DIONE
AMADOU BALLA DIAGNE

For the Republic of Singapore:

WAN SENG KONG

For Sweden:

KRISTER BJÖRNSJÖ

For the Confederation of Switzerland:

H. BLASER
H. A KIEFFER

For the United Republic of Tanzania:

FRANK M. MGAYA

For the Czechoslovak Socialist Republic:

Ing. F. KRÁLÍK

For Thailand:

SUCHART P. SAKORN
DANAI LEKHYANANDA
VORAPUTHI JAYANAMA

For the Union of Soviet Socialist Republics:

BADALOV A. L.

For the Oriental Republic of Uruguay:

Col. (Av) JOSÉ R. HEGUI
ROSENDO F. HERNANDEZ

For the Republic of Venezuela:

CARLOS J. MARTINEZ
DE LA ROSA MARRAS MIGUEL J.
ALEJANDRO MADRIGAL
ALCAZAR N. V.
BELLORIN J. R.

For the Yemen Arab Republic:

AHMED HASSAN ELZAGGAR

For the People's Democratic Republic of Yemen:

OMER ABDULLA YAFAI

For the Socialist Federal Republic of Yugoslavia:

DULOVIĆ LJUBOMIR

ANNEX 1

Partial revision of Articles 5, 9, 28 and 35 of the Radio Regulations and Appendices 1 and 3 to these Regulations

ARTICLE 5

Article 5 of the Radio Regulations shall be amended as follows:

Replace Regulation No. 201A by the following new text:

MOD 201A Aer2 The frequencies 2 182 kHz, 3 023 kHz, 5 680 kHz, 8 364 kHz, 121.5 MHz, 156.8 MHz and 243 MHz may also be used, in accordance with the procedures in force for terrestrial radiocommunication services, for search and rescue operations concerning manned space vehicles.

The same applies to the frequencies 10 003 kHz, 14 993 kHz and 19 993 kHz, but in each of these cases emissions must be confined in a band of ± 3 kHz about the frequency.

Replace Regulation No. 205A by the following new text:

MOD 205A Aer2 The carrier (reference) frequencies 3 023 kHz and 5 680 kHz may also be used, in accordance with Nos. **1326C** and **1353B** respectively, by stations of the maritime mobile service engaged in coordinated search and rescue operations.

ARTICLE 9

Article 9 of the Radio Regulations shall be amended as follows:

After Regulation No. 553 add the following new Regulation:

ADD 553A Aer2 *aa)* the notice is in conformity with the provisions of No. **501**;

Regulation No. 557 is amended as follows:

(MOD) 557 Aer2 . . . . Plan;

After Regulation No. 557 add the following new Regulation:

ADD 557A Aer2 (2A) A notice which is not in conformity with the provisions of No. **553A** shall be examined with respect to Nos. **520** and **521**. The date to be entered in Column 2b shall be determined in accordance with the relevant provisions of Section III of this Article.

Replace Regulation No. 558 by the following new text:

MOD 558 Aer2 (3) In the case of a notice in conformity with the provisions of Nos. 553A to 556, but not with those of No. 557, the Board shall examine whether the protection specified in Appendix 27 Aer2 (Part I, Section IIA, paragraph 5) is afforded to the allotments in the Plan. In doing so, the Board shall assume that the frequency will be used in accordance with the "Sharing conditions between areas" specified in Appendix 27 Aer2, Part I, Section IIB, paragraph 4.

ARTICLE 28

Article 28 of the Radio Regulations shall be amended as follows:

Replace Regulation No. 969A by the following new text:

MOD 969A Aer2 (3) The aeronautical carrier (reference) frequencies 3 023 kHz and 5 680 kHz may be used by mobile stations for search and rescue scene-of-action coordination purposes, including communication between these stations and participating land stations, in accordance with any special arrangements by which the aeronautical mobile service is regulated (see Nos. 1326C and 1353B).

ARTICLE 35

Article 35 of the Radio Regulations shall be amended as follows:

Replace Regulation No. 1326C by the following new text:

MOD 1326C Aer2 § 3A. The aeronautical carrier (reference) frequency 3 023 kHz may be used for intercommunication between mobile stations when engaged in coordinated search and rescue operations, including communication between these stations and participating land stations, in accordance with the provisions of Appendix 27 Aer2.

Replace Regulation No. 1353B by the following new text:

MOD 1353B Aer2 § 15A. The aeronautical carrier (reference) frequency 5 680 kHz may be used for intercommunication between mobile stations when engaged in coordinated search and rescue operations, including communication between these stations and participating land stations, in accordance with the provisions of Appendix 27 Aer2.

APPENDIX 1

Appendix 1 to the Radio Regulations shall be amended as follows:

Replace paragraph 3 on page AP1-15 of the Radio Regulations by the following text:

MOD 3. In any case where there are one or more reference frequencies in a particular transmission (e.g. in the case of *(a)* the frequency of the reduced carrier in an independent or single-sideband emission, and *(b)* the frequencies of the sound and vision carriers in a television emission), such reference frequencies shall be supplied. In the case of television broadcasting stations in Region 1, each notice shall include, as supplementary information, both the frequency of the other carrier and the assigned frequency.

APPENDIX 3

Mar Mar2 Aer2

Appendix 3 to the Radio Regulations shall be amended as follows:

Table of frequency tolerances *

(See Article 12)

	Frequency bands (lower limit exclusive, upper limit inclusive) and Categories of stations	Tolerances applicable until 1st January, 1966* to transmitters in use and to those to be installed before 1st January, 1964	Tolerances applicable to new transmitters installed after 1st January, 1964 and to all transmitters after 1st January, 1966*
		* 1st January, 1970 in the case of all tolerances marked with an asterisk.	
	. . . . .		
	Band: **1 605 to 4 000 kHz**		
	. . . . .		
MOD	2. *Land stations*		
	– power 200 W or less	100	100 *h) l) r)*
	– power above 200 W	50	50 *h) l) r)*
	3. *Mobile stations*		
	. . . .		
MOD	c) Aircraft stations	200*	100* *r)*
	Band: **4 to 29.7 MHz**		
	. . . . .		
	2. *Land stations*		
	. . . . .		
MOD	b) Aeronautical stations:		
	– power 500 W or less	100	100 *r)*
	– power above 500 W	50	50 *r)*
	. . . . .		
	3. *Mobile stations*		
	. . . . .		
MOD	c) Aircraft stations	200*	100* *r)*

Notes referring to Table of Frequency Tolerances

after note q) add the following new note:

ADD *r)* For single-sideband transmitters operating in the frequency bands 1 605-4 000 kHz and 4-29.7 MHz which are allocated exclusively to the aeronautical mobile (R) service, the tolerance on the carrier (reference) frequency is:

1.	for all aeronautical stations	10 Hz
2.	for all aircraft stations operating on international services	20 Hz
3.	for aircraft stations operating exclusively on national services	50 Hz **

** *Note.* – In order to achieve maximum intelligibility it is suggested that administrations encourage the reduction of this tolerance to 20 Hz.

ANNEX 2

Revision of Appendix 27 to the Radio Regulations

Appendix 27 to the Radio Regulations shall be amended as follows:

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  - Major World Air Route Area Maps (MWARAs) (Maps 1, 4 and 6)
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  - VOLMET Allotment and Reception Area Maps (Maps 3, 8 and 9)
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- C. Classes of emission and power 20
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PART II

Plan for the Allotment of Frequencies for the Aeronautical Mobile (R) Service in the Exclusive Bands between 2 850 and 17 970 kHz

SECTION I. Description of the Boundaries of the Areas and Sub-Areas

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[*] Certain errors which have been found in the plotting of the limits of areas in the maps of the Final Acts presented to the signature have been corrected.

Page

Article 3. Description of the Boundaries of the VOLMET Allotment Areas and VOLMET Reception Areas 47

Article 4. World-wide Allotment Areas 50

SECTION II. Allotment of Frequencies in the Aeronautical Mobile (R) Service

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MOD

APPENDIX 27 Aer2

to the Radio Regulations

Frequency Allotment Plan for the Aeronautical Mobile (R) Service and Related Information

(See Article 7 of the Radio Regulations)

PART I

General Provisions

Section I

Definitions

After number 27/8 add the following new number:

ADD **27/8A Aer2** 8A. *A World-Wide Allotment Area* is one in which frequencies are allotted to provide long-distance communication between an aeronautical station within that allotment area and aircraft operating anywhere in the world [1].

Replace number 27/9 by the following new text:

MOD **27/9 Aer2** 9. *A Family of Frequencies in the Aeronautical Mobile (R) Service* contains two or more frequencies selected from different aeronautical mobile (R) bands and is intended to permit communication at any time within the authorized area of use (see Nos. **27/189** to **27/207**) between aircraft stations and appropriate aeronautical stations.

ADD **27/8A.1 Aer2** [1] The type of communication referred to in 27/8A may be regulated by administrations.

Section II

Technical and Operational Principles used for the Establishment of the Plan of Allotment of Frequencies in the Aeronautical Mobile (R) Service

Replace the title following the title of Section II by the following new title:

MOD **A. Channel characteristics and utilization**

1. *Frequency separation*

Replace numbers 27/10 and 27/11 by the following new texts:

MOD **27/10 Aer2** 1.1 The frequency separation between carrier (reference) frequencies shall be 3 kHz. This is adequate to permit communications using the classes of emission referred to in Nos. **27/49-27/52** in the frequency bands between 2 850 kHz and 17 970 kHz allocated exclusively to the aeronautical mobile (R) service. The carrier (reference) frequency of the channels in the Plan shall be an integral multiple of 1 kHz.

MOD **27/11 Aer2** 1.2 For radiotelephone emissions the audio frequencies will be limited to between 300 and 2 700 Hz and the occupied bandwidth of other authorized emissions will not exceed the upper limit of A3J emissions. In specifying these limits, however, no restriction in their extension is implied in so far as emissions other than A3J are concerned, provided that the limits of unwanted emissions are met (see Nos. **27/66B** and **27/66C**).

After number 27/11 add the following new numbers:

ADD **27/11A Aer2** *Note:* For aircraft and aeronautical station transmitter types first installed before 1 February 1983, the audio frequencies will be limited to 3 000 Hz.

ADD **27/11B Aer2** 1.3 On account of the possibility of interference, a given channel should not be used in the same allotment area for radiotelephony and data transmissions.

Replace number 27/12 by the following new text:

MOD **27/12 Aer2** 1.4 The use of channels derived from the frequencies indicated in No. **27/16** for the various classes of emissions other than A3J and A2H will be subject to special arrangements by the administrations concerned and affected in order to avoid harmful interference which may result from the simultaneous use of the same channel for several classes of emission.

Delete number 27/13.

Replace numbers 27/14 and 27/15 by the following new texts:

MOD **27/14** **Aer2** 1.5 To preclude the possibility of interference, adjacent channels in the list of frequencies in No. **27/16** have not as a rule been allotted to the same MWARA, RDARA or VOLMET areas. However, to satisfy particular needs, the administrations concerned may conclude special arrangements for the assignment of adjacent channels derived from the frequencies in the table (No. **27/16**).

MOD **27/15** **Aer2** 1.6 The arrangements contemplated in Nos. **27/12** and **27/14** should be made under the Articles of the International Telecommunication Convention and the Radio Regulations entitled "Special Arrangements".

Replace the sub-title preceding number 27/16 and number 27/16 by the following new texts:

MOD 2. *Frequencies allotted*

MOD **27/16** **Aer2** The list of carrier (reference) frequencies allotted in the bands allocated exclusively to the aeronautical mobile (R) service, on the basis of the frequency separation provided for under No. **27/10**, will be found in the following table [1]:

[see page 16]

ADD **27/16.1** **Aer2** [1] To calculate the assigned frequency from a carrier (reference) frequency given in the table, reference should be made to Nos. **27/72**, **27/72B** and **27/73**.

kHz

2850-3025		
2851	2938	57 channels
2854	2941	
2857	2944	
2860	2947	
2863	2950	
2866	2953	
2869	2956	
2872	2959	
2875	2962	
2878	2965	
2881	2968	
2884	2971	
2887	2974	
2890	2977	
2893	2980	
2896	2983	
2899	2986	
2902	2989	
2905	2992	
2908	2995	
2911	2998	
2914	3001	
2917	3004	
2920	3007	
2923	3010	
2926	3013	
2929	3016	
2932	3019	
2935		
	3023	(R) and (OR)

3400-3500		
3401	3452	33 channels
3404	3455	
3407	3458	
3410	3461	
3413	3464	
3416	3467	
3419	3470	
3422	3473	
3425	3476	
3428	3479	
3431	3482	
3434	3485	
3437	3488	
3440	3491	
3443	3494	
3446	3497	
3449		

4650-4700		
4651	4675	16 channels
4654	4678	
4657	4681	
4660	4684	
4663	4687	
4666	4690	
4669	4693	
4672	4696	

5450-5480 *Region 2*		
5451	5466	9 channels
5454	5469	
5457	5472	
5460	5475	
5463		

5480-5680		
5481	5580	66 channels
5484	5583	
5487	5586	
5490	5589	
5493	5592	
5496	5595	
5499	5598	
5502	5601	
5505	5604	
5508	5607	
5511	5610	
5514	5613	
5517	5616	
5520	5619	
5523	5622	
5526	5625	
5529	5628	
5532	5631	
5535	5634	
5538	5637	
5541	5640	
5544	5643	
5547	5646	
5550	5649	
5553	5652	
5556	5655	
5559	5658	
5562	5661	
5565	5664	
5568	5667	
5571	5670	
5574	5673	
5577	5676	
	5680	(R) and (OR)

6525-6685		
6526	6607	53 channels
6529	6610	
6532	6613	
6535	6616	
6538	6619	
6541	6622	
6544	6625	
6547	6628	
6550	6631	
6553	6634	
6556	6637	
6559	6640	
6562	6643	
6565	6646	
6568	6649	
6571	6652	
6574	6655	
6577	6658	
6580	6661	
6583	6664	
6586	6667	
6589	6670	
6592	6673	
6595	6676	
6598	6679	
6601	6682	
6604		

8815-8965		
8816	8891	49 channels
8819	8894	
8822	8897	
8825	8900	
8828	8903	
8831	8906	
8834	8909	
8837	8912	
8840	8915	
8843	8918	
8846	8921	
8849	8924	
8852	8927	
8855	8930	
8858	8933	
8861	8936	
8864	8939	
8867	8942	
8870	8945	
8873	8948	
8876	8951	
8879	8954	
8882	8957	
8885	8960	
8888		

10005-10100		
10006	10054	31 channels
10009	10057	
10012	10060	
10015	10063	
10018	10066	
10021	10069	
10024	10072	
10027	10075	
10030	10078	
10033	10081	
10036	10084	
10039	10087	
10042	10090	
10045	10093	
10048	10096	
10051		

11275-11400		
11276	11339	41 channels
11279	11342	
11282	11345	
11285	11348	
11288	11351	
11291	11354	
11294	11357	
11297	11360	
11300	11363	
11303	11366	
11306	11369	
11309	11372	
11312	11375	
11315	11378	
11318	11381	
11321	11384	
11324	11387	
11327	11390	
11330	11393	
11333	11396	
11336		

13260-13360		
13261	13312	33 channels
13264	13315	
13267	13318	
13270	13321	
13273	13324	
13276	13327	
13279	13330	
13282	13333	
13285	13336	
13288	13339	
13291	13342	
13294	13345	
13297	13348	
13300	13351	
13303	13354	
13306	13357	
13309		

17900-17970		
17901	17937	23 channels
17904	17940	
17907	17943	
17910	17946	
17913	17949	
17916	17952	
17919	17955	
17922	17958	
17925	17961	
17928	17964	
17931	17967	
17934		

Delete numbers 27/17, 27/18 and 27/19.

Replace number 27/20 by the following new text:

MOD **27/20** **Aer2** 4. The International Civil Aviation Organization (ICAO) coordinates radiocommunications of the aeronautical mobile (R) service with international aeronautical operations and this Organization should be consulted in all appropriate cases in the operational use of the frequencies in the Plan.

Replace number 27/23 by the following new text:

MOD **27/23** **Aer2** 7. The coordination described in No. **27/20** shall be effected where appropriate and desirable for the efficient utilization of the frequencies in question, and especially when the procedures of No. **27/22** are unsatisfactory.

B. Interference range contours

Replace the sub-title preceding number 27/24 and number 27/24 by the following new texts:

MOD **27/24** **Aer2** 1. *General provisions*

ADD **27/24A** **Aer2** 1.1 *Service range*

Due to factors such as the power of the transmitter, propagation loss, noise level, etc., there is a limit to the distance at which reliable communications can be effected between an aeronautical station and an aircraft station. This limiting distance, based on the weakest path, is the service range. The boundary of the air route area is often assumed to be the limiting distance.

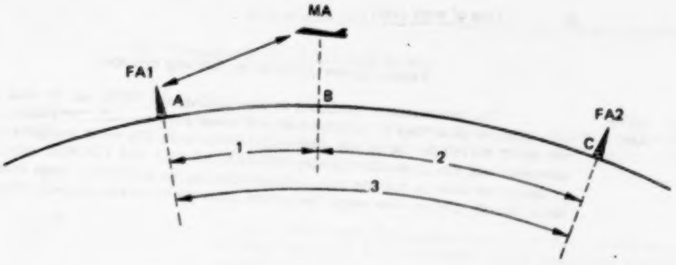
ADD **27/24B** **Aer2** 1.2 *Interference range*

This is the minimum distance from the limit of the service range of a wanted station to a potentially interfering station needed to produce a protection ratio of 15 dB. This protection ratio is between the wanted signal at an aircraft station at the limit of the service range and the signal from a potentially interfering aeronautical station operating on the same frequency. The interference range has been calculated for different frequencies indicated on the data tables contained in Nos. **27/39-27/48** for day and night conditions, for median latitudes, for conditions of median sunspot activity and for a mean effective radiated power of 1 kW at the aeronautical station.

ADD **27/24C** **Aer2** 1.3 *Repetition distance*

This is the distance at which a frequency may be successfully shared and is equal to the sum of the service range and the interference range.

ADD **27/24D** **Aer2** 1.4 Figure 1 illustrates the use of the concept of interference range in frequency planning through the determination of repetition distance.



FA1 = aeronautical station in communication with aircraft station MA.

FA2 = aeronautical station in communication with aircraft stations other than MA.

MA = aircraft station in communication with aeronautical station FA1.

1 = service range AB.

2 = interference range CB.

3 = repetition distance AC.

FIGURE 1

Service range, interference range, repetition distance

ADD 27/24E
Aer2

1.5 The transparencies associated with this Appendix show, for the frequencies stated, the interference range defined in No. **27/24B** between an interfering aeronautical station and an aircraft station operating at the limit of its service range. Because of the variability of propagation conditions not only from hour to hour within the daytime and night time periods but also from day to day, with season, with solar activity level and geographic location, the 15 dB protection ratio may be expected to have marked variations and accordingly a greater protection may be available much of the time, especially when the aircraft is not operating at the limit of its service range.

ADD 27/24F
Aer2

1.6 Supplementary information on service range, interference range and repetition distance, as well as on the use of the transparencies can be found in the technical documentation issued by the IFRB, such as texts of the IFRB Seminar on frequency management and use of the frequency spectrum; Doc. No. 11/76 or revisions thereof.

Replace number 27/25 by the following new text:

MOD 27/25
Aer2

1.7 Two types of transparencies are provided for use respectively with the Mercator projection world maps and the Lambert azimuthal equal area projection maps for the polar areas. The Mercator projection transparencies encompass the area between latitude 60° North and 60° South. The transparencies associated with the Polar area projections encompass the areas north of latitude 30° North and south of latitude 30° South. The Mercator projection overlaps the Polar projection maps between latitudes 30° and 60° North and 30° and 60° South. This overlap is intended to provide continuity between transparencies of the two projections.

2. *Type of maps used*

Replace number 27/26 by the following new text:

MOD **27/26 Aer2** The transparencies mentioned in Nos. 27/24E and 27/25, can be used only on a world or polar map of the projection and scales given on each transparency and will not be suitable for use on any other projection or scale. The world and polar maps associated with this Appendix, depicting MWARA, RDARA and VOLMET areas, are to the correct scale so that the transparencies carrying the interference range contours can be directly used on these maps. The auroral zones are marked on the polar maps.

4. *Sharing conditions between areas*

Preceding number 27/30 add the following new sub-title:

ADD

4.1 *Frequency bands 3 MHz to 11.3 MHz*

Replace numbers 27/30 and 27/31 by the following new texts:

MOD **27/30 Aer2** 4.1.1 The transparencies are constructed on the basis of the following sharing conditions:

Areas	Bands between: (MHz)	Sharing conditions
MWARA or VOLMET area to MWARA or VOLMET area	3 and 6.6 9 and 11.3	night propagation day propagation *Note:* 6.6 MHz and 5.6 MHz sharing conditions are considered to be the same
MWARA or VOLMET area to RDARA	3 and 5.6 6.6 and 11.3	night propagation day propagation
RDARA to RDARA	3 and 4.7 5.6 and 11.3	night propagation day propagation

MOD **27/31 Aer2** 4.1.2 The additional "Day" contours included for 3 MHz, 3.5 MHz and 4.7 MHz are for determining daylight sharing possibilities.

After number 27/31 add the following new sub-title and numbers:

ADD 4.2 *Frequency bands 13 MHz and 18 MHz*

ADD **27/31A Aer2** 4.2.1 The revised Frequency Allotment Plan for the 13 MHz and 18 MHz bands is based on daytime protection only. This results in the following sharing possibilities:

ADD **27/31B Aer2** 4.2.2 for the 13 MHz band, the repetition factor is at least 3 whilst for the 18 MHz band it is 4. It is to be noted that the longitudinal separation might be decreased to allow for a repetition of 4 (at 13 MHz) and 6 (at 18 MHz), taking into account operational and local circumstances;

ADD **27/31C Aer2** 4.2.3 the sharing takes into account the likely locations of the aeronautical stations rather than the area boundaries.

Replace numbers 27/32, 27/33, 27/34, 27/35 and 27/36, as well as the sub-title preceding them, by the following new texts:

MOD 5. *Method of use of the transparencies for the bands 3 MHz to 11.3 MHz*

MOD **27/32 Aer2** 5.1 Take the appropriate MWARA, RDARA or VOLMET area map associated with this Appendix and select the transparency for the frequency order and sharing conditions under consideration.

MOD **27/33 Aer2** 5.2 The equal area projections (Lambert) are applicable in the polar areas north of 60°N and south of 60°S; and the Mercator projections are applicable between 60°N and 60°S.

MOD **27/34 Aer2** 5.3 Place the centre of the transparency (i.e. the intersection of the axis of symmetry and the latitude line) over the boundary of the area (use the reception area boundary in the case of VOLMET) at the point on the boundary nearest to the potentially interfering transmitter or at the location of the interfering transmitter. Note the latitude of the selected point and use the interference range contour corresponding to this latitude.

MOD **27/35 Aer2** 5.4 A transmitter located at any point outside the contour will result, as defined in No. **27/24B**, in a protection ratio of better than 15 dB.

MOD **27/36 Aer2** 5.5 A transmitter located at any point inside the contour will result in a protection ratio of less than 15 dB. However, if the transmitter is located inside the contour but the propagation path traverses an auroral zone, it is assumed that the signal attenuation within this zone will result in a protection ratio of better than 15 dB.

……

(MOD) 27/37 [*Concerns the Spanish text only*]

……

Delete number 27/38.

C. Classes of emission and power

1. *Classes of emission*

Replace numbers 27/49, 27/50, 27/51 and 27/52 by the following new texts:

MOD 27/49 Aer2 In the aeronautical mobile (R) service the use of emissions such as those listed below is permissible subject to compliance with the special provisions applicable to each case and provided that such use does not cause harmful interference to other users of the channel concerned.

MOD 27/50 Aer2 1.1 *Telephony – Amplitude modulation:*

– double sideband	A3 *
– single sideband, full carrier	A3H *
– single sideband, suppressed carrier	A3J

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* A3 and A3H to be used only on 3 023 kHz and 5 680 kHz as well as in cases covered by Resolution N° Aer2 – 3, resolves 5.

1.2 *Telegraphy (including automatic data transmission)*

MOD 27/51 Aer2 1.2.1 *Amplitude modulation:*

– telegraphy without the use of a modulating audio frequency (by on-off keying)	A1 **
– telegraphy by the on-off keying of an amplitude modulating audio frequency or audio frequencies or by the on-off keying of the modulated emission and including selective calling, single sideband, full carrier	A2H
– multichannel voice frequency telegraphy, single sideband, suppressed carrier	A7J
– other transmissions such as automatic data transmission, single sideband, suppressed carrier	A9J

** (see number 27/52)

MOD 27/52 Aer2 1.2.2 *Frequency modulation:*

– telegraphy by frequency shift keying without the use of a modulating audio frequency, one of two frequencies being emitted at any instant F1 **

** A1 and F1 are permitted provided they do not cause harmful interference to the classes of emission A2H, A3J, A7J and A9J. In addition, A1 and F1 emissions shall be in accordance with the provisions in Nos. 27/65 to 27/66C and care should be taken to place these emissions at or near the centre of the channel. However, a modulating audio frequency is permitted with single sideband transmitters, where the carrier is supressed in accordance with No. 27/63.

Delete number 27/53.

2. *Power*

Replace numbers 27/54, 27/55 and 27/56 by the following new texts:

MOD 27/54 Aer2 2.1 Unless otherwise specified in Part II of this Appendix, the peak envelope powers supplied to the antenna transmission line shall not exceed the maximum values indicated in the table below; the corresponding peak effective radiated powers being assumed to be equal to two-thirds of these values:

Class of emission	Stations	Maximum peak envelope power
A2H, A3J, A7J, A9J A3*, A3H* (100 % modulation)	Aeronautical stations Aircraft stations	6 kW 400 W
Other emissions such as A1, F1	Aeronautical stations Aircraft stations	1.5 kW 100 W

* A3 and A3H to be used only on 3 023 kHz, and 5 680 kHz, as well as in cases covered by Resolution No. Aer2–3, resolves 5.

MOD 27/55 Aer2 2.2 It is assumed that the maximum peak envelope powers specified above for aeronautical stations will produce the mean effective radiated power of 1 kW used as a basis for the interference range contours.

MOD 27/56 Aer2 2.3 In order to provide satisfactory communication with aircraft, aeronautical stations serving MWARA, VOLMET and world-wide allotment areas may exceed the power limits specified in No. 27/54, except in the case of

3 023 kHz and 5 680 kHz which are subject to the special provisions of Nos. **27/208** to **27/214**. In each such case, the administration having jurisdiction over the aeronautical station shall note No. **694** of the Radio Regulations and ensure:

Replace number 27/62 by the following new text:

MOD **27/62** Aer2 2.4 It is recognized that the power employed by aircraft transmitters may, in practice, exceed the limits specified in No. **27/54**. However, the use of such increased power (which normally should not exceed 600 W P_p) shall not cause harmful interference to stations using frequencies in accordance with the technical principles on which the Allotment Plan is based.

After number 27/62 add the following new title:

ADD **D. Limits to the power levels of unwanted emissions**

Replace the sub-title preceding number 27/63 and number 27/63 by the following new texts:

MOD 1. *Technical provisions relating to the use of single-sideband emissions*

MOD **27/63** Aer2 1.1 *Definitions of carrier modes:*

Carrier mode	Level *N* (dB) of the carrier with respect to peak envelope power
Full carrier (for example A2H)	$0 \geq N \geq -6$
Suppressed carrier (for example A3J)	Aircraft stations $N < -26$ Aeronautical stations $N < -40$

Delete number 27/64.

Replace the sub-title preceding number 27/65 and the numbers 27/65 and 27/66 by the following new texts:

MOD 2. *Tolerance for levels of emission outside the necessary bandwidth*

MOD **27/65** Aer2 2.1 In a single-sideband transmission, the mean power of any emission supplied to the antenna transmission line of an aeronautical or aircraft station on any discrete frequency, shall be less than the mean power (P_m) of the transmitter in accordance with the table in No. **27/66**.

MOD **27/66**
Aer2

2.2 For aircraft station transmitter types and for aeronautical station transmitters first installed before 1 February 1983:

Frequency separation Δ from the assigned frequency kHz	Minimum attenuation below mean power (P_m) dB
$2 \leq \Delta < 6$	25
$6 \leq \Delta < 10$	35
$10 \leq \Delta$	Aircraft stations: 40 Aeronautical stations: $43 + 10 \log_{10} (P_m)$ (watts)

After number 27/66 add the following new numbers:

ADD **27/66A**
Aer2

Note: All transmitters first placed in operation after 1 February 1983 shall comply with the specifications contained in No. **27/66C.**

ADD **27/66B**
Aer2

2.3 In a single-sideband transmission, the peak envelope power (P_p) of any emission supplied to the antenna transmission line of an aeronautical or aircraft station on any discrete frequency, shall be less than the peak envelope power (P_p) of the transmitter in accordance with the table in No. **27/66C**.

ADD **27/66C**
Aer2

2.4 For aircraft station transmitters first installed after 1 February 1983 and for aeronautical station transmitters in use after 1 February 1983:

Frequency separation Δ from the assigned frequency kHz	Minimum attenuation below peak envelope power (P_p) dB
$1.5 \leq \Delta < 4.5$	30
$4.5 \leq \Delta < 7.5$	38
$7.5 \leq \Delta$	Aircraft stations: 43 Aeronautical stations *

* For transmitter power up to and including 50 watts: $43 + 10 \log_{10} P_p$ (watts). For transmitter powers more than 50 watts, the attenuation shall be at least 60 dB.

Delete numbers 27/67, 27/68, 27/69, 27/70 and 27/71.

After the new number 27/66C add the following new title:

ADD

E. Other technical provisions

Replace the title preceding number 27/72 and number 27/72 by the the following new texts:

MOD 1. *Assigned frequencies*

MOD **27/72 Aer2** 1.1 For single-sideband emissions, except the class of emission A2H, the assigned frequency shall be at a value 1400 Hz above the carrier (reference) frequency.

After number 27/72 add the following new numbers:

ADD **27/72A Aer2** 1.2 For aeronautical stations equipped with selective calling systems, the class of emission A2H shall be indicated in the Supplementary Information column of the form of notice (see Appendix 1 to the Radio Regulations).

ADD **27/72B Aer2** 1.3 For classes of emission A1 and F1 the assigned frequency shall be chosen in accordance with the provisions of the footnote to Nos. **27/51** and **27/52.**

Replace number 27/73 by the following new text:

MOD **27/73 Aer2** 1.4 The assigned frequency of a station employing double sideband emissions (A3) shall be at the carrier (reference) frequency.

PART II

Replace the title of Part II by the following:

(MOD) **Plan for the Allotment of Frequencies for the Aeronautical Mobile (R) Service in the Exclusive Bands between 2 850 and 17 970 kHz**

Section I

Description of the Boundaries of the Areas and Sub-Areas

Replace number 27/76 by the following new text:

(MOD) 27/76 Aer2 3. References to the name of a country or of a geographical area in the descriptions or on the maps and the borders shown on the maps do not imply the expression of any opinion whatsoever on the part of the ITU concerning the political status of such a country or geographical area or any official recognition of these borders.

ARTICLE 1

Description of the Boundaries of the Major World Air Route Areas (MWARAs)

Delete number 27/81.

Replace numbers 27/82, 27/83 and 27/84 by the following new texts:

MOD 27/82 Aer2 *Major World Air Route Area – CENTRAL EAST PACIFIC* (MWARA-CEP)

From the point 50°N 122°W through the points 38°N 120°W, 15°N 110°W, 20°S 145°W, 20°S 152°W, 30°N 165°W, to the point 50°N 122°W.

MOD 27/83 Aer2 *Major World Air Route Area – CENTRAL WEST PACIFIC* (MWARA-CWP)

From the point 40°N 117°E through the points 25°N 155°W, 17°N 155°W, 00° 165°W, 00° 170°E, 12°S 165°E, 12°S 136°E, 09°N 115°E, 23°N 114°E, to the point 40°N 117°E.

MOD 27/84
Aer2

Major World Air Route Area – EUROPE
(MWARA-EUR)

From the point 33°N 12°W through the points 54°N 12°W, 70°N 00°, 74°N 40°E, 74°N 52°E, 60°N 52°E, 40°N 36°E, 29°N 35°30′E, 32°N 13°E, to the point 33°N 12°W.

Delete number 27/85.

After number 27/84 add the following new number:

ADD 27/85A
Aer2

Major World Air Route Area – INDIAN OCEAN
(MWARA–INO)

From the South Pole through the points 30°S 26°E, 20°N 35°E, 30°N 60°E, 30°N 90°E, 30°S 120°E, 40°S 160°E to the South Pole.

Replace numbers 27/86 and 27/87 by the following new texts:

MOD 27/86
Aer2

Major World Air Route Area – MIDDLE EAST
(MWARA-MID)

From the point 51°N 30°E through the points 57°N 37°E, 50°N 80°E, 44°N 94°E, 08°N 76°E, 11°45′N 42°E, 16°N 42°E, 30°N 30°E, to the point 51°N 30°E.

MOD 27/87
Aer2

Major World Air Route Area – NORTH ATLANTIC
(MWARA-NAT)

From the North Pole through the points 60°N 135°W, 49°N 120°W, 49°N 74°W, 39°N 78°W, 18°N 66°W, 05°N 55°W, 16°N 26°W, 32°N 08°W, 44°N 02°E, 60°N 20°E, to the North Pole.

After number 27/87 add the following new number:

ADD 27/87A
Aer2

Major World Air Route Area – NORTH CENTRAL ASIA
(MWARA-NCA)

From the North Pole through the points 75°N 10°E, 60°N 25°E, 30°N 25°E, 30°N 73°E, 37°N 73°E, 49°N 85°E, 42°N 97°E, 42°N 110°E, 45°N 113°E, 46°30′N 120°E, 49°N 116°E, 54°N 123°E, 45°N 133°E, 40°N 124°E, 30°N 124°E, 25°N 135°E, 65°N 170°W, to the North Pole.

Delete numbers 27/88, 27/89, 27/90, 27/91, 27/92 and 27/93.

Replace numbers 27/94 and 27/95 by the following new texts:

MOD 27/94
Aer2

Major World Air Route Area – NORTH PACIFIC
(MWARA-NP)

From the North Pole through the points 60°N 135°W, 47°N 118°W, 30°N 165°W, 30°N 115°E, 41°N 116°E, 55°N 135°E to the North Pole.

MOD 27/95
Aer2

Major World Air Route Area – AFRICA
(MWARA-AFI)

From the point 40°N 35°W, through the points 37°N 03°W, 37°N 44°E, the border between the Republic of Iraq and Iran, the points 29°N 48°E, 26°N 56°E, 20°N 62°E, 22°S 60°E, 35°S 30°E, 35°S 16°E, 05°N 03°W, 05°N 35°W, to the point 40°N 35°W.

Delete numbers 27/96 and 27/97.

Replace number 27/98 by the following new text:

MOD 27/98
Aer2

Major World Air Route Area – SOUTH ATLANTIC
(MWARA-SAT)

From the South Pole through the points 30°S 75°W, 19°S 53°W, 00° 60°W, 20°N 60°W, 25°N 25°W, 41°N 15°W, 41°N 03°W, 15°N 03°W, 20°S 32°E to the South Pole.

Delete number 27/99.

Replace number 27/100 by the following new text:

MOD 27/100
Aer2

Major World Air Route Area –SOUTH AMERICA
(MWARA-SAM)

From the South Pole through the points 15°N 125°W, 15°N 60°W, 10°N 60°W, 05°S 30°W, 36°S 52°W, to the South Pole.

Delete number 27/101.

Replace numbers 27/102 and 27/103 by the following new texts:

MOD 27/102
Aer2

Major World Air Route Area – SOUTH EAST ASIA
(MWARA-SEA)

From the point 26°N 130°E, through the points 00° 130°E, 00° 135°E, 12°S 145°E, 12°S 160°E, 25°S 155°E, 40°S 150°E, 35°S 115°E, 18°N 62°E, 26°N 65°E, to the point 26°N 130°E.

MOD 27/103
Aer2

Major World Air Route Area – SOUTH PACIFIC
(MWARA-SP)

From the South Pole through the points 38°S 145°E, 00° 167°E, 00° 175°W, 22°N 158°W, 22°N 156°W, 00° 120°W to the South Pole.

After number 27/103 add the following new number:

ADD 27/103A
Aer2

Major World Air Route Area – EAST ASIA
(MWARA-EA)

From the point 55°N 124°E through the points 37°N 145°E, 26°N 130°E, 00° 130°E, 00° 80°E, 18°N 62°E, 37°N 67°E, 55°N 80°E to the point 55°N 124°E.

ARTICLE 2

Description of the Boundaries of the Regional and Domestic Air Route Areas (RDARAs)

Replace numbers 27/104, 27/105, 27/106, 27/107, 27/108, 27/109, 27/110 and 27/111 by the following new texts:

(MOD) 27/104
Aer2

Regional and Domestic Air Route Area-1
(RDARA-1)

From the North Pole along the 15°W meridian to the point 72°N 15°W, then through the points 40°N 50°W, 30°N 39°W, 30°N 10°W, 31°N 10°W, to the point 31°N 10°E. Then along the Libya-Tunisia border to the Mediterranean, thence along the coast of Libya and the Arab Republic of Egypt to Alexandria. Thence to Cairo, eastward along the Cairo parallel to intersect the 40°E meridian, and north along the 40°E meridian to the south coast of the Black Sea. Thence west along the Black Sea coast of Turkey to intersect the 30°E meridian, then along the 30°E meridian to the border of Roumania and the U.S.S.R., thence along the border between the U.S.S.R. and the following countries: Roumania, Hungary, the Czechoslovak Socialist Republic and Poland. Thence along the U.S.S.R. Baltic Sea coast, to the border between Finland and the U.S.S.R., and between Norway and the U.S.S.R., to the point 70°N 32°E, and along the 32°E meridian to the North Pole.

MOD 27/105
Aer2

Sub-Area 1A

From the point 65°N 26°W, and through the points 40°N 50°W, 40°N 20°W, 60°N 20°W, 60°N 26°W, to the point 65°N 26°W.

MOD 27/106
Aer2

Sub-Area 1B

From the North Pole along the 15°W meridian to the point 72°N 15°W, then through the points 65°N 26°W, 60°N 26°W, 60°N 20°W to the points 50°N 20°W and 50°N 10°W, thence east along the territorial waters between the Channel Islands and the French coastline, reaching the latter at the meridian 03°W. Thence following the French coastline northeastward and the frontier of France with Belgium, Luxembourg and the Federal Republic of Germany. Thence along the border between Switzerland and the Federal Republic of Germany and along the border between the latter and Austria. Thence along the border between the Czechoslovak Socialist Republic and the Federal Republic of Germany, then along the border between the Federal Republic of Germany and the German Democratic Republic towards the Baltic Sea. Then west along the coastline of the Federal Republic of Germany to the border between the latter and Denmark. Along this border to the North Sea. Thence along the 55°N parallel to the point 55°N 04°E, then through the points 56°N 03°E, 59°N 02°E, 62°N 01°E. Thence along the 01°E meridian to the North Pole.

MOD 27/107
Aer2

Sub-Area 1C

From the North Pole along the meridian 01°E to the point 62°N 01°E. Thence through the points 59°N 02°E, 56°N 03°E, 55°N 04°E and then east along the 55°N parallel and the border between Denmark and the Federal Republic of Germany to the Baltic Sea and along the Baltic Sea coast of the Federal Republic of Germany to the border between the Federal Republic of Germany and the German Democratic Republic. Along this border and continuing along the western borders of the Czechoslovak Socialist Republic and Austria to the borders between Austria and Switzerland, Austria and Liechtenstein and Austria and Switzerland. Thence eastward along the southern borders of Austria and Hungary, thence along the border between Hungary and Roumania. Thence, along the border between the U.S.S.R. and the following countries: Hungary, the Czechoslovak Socialist Republic and Poland. Thence to the Baltic Sea, along the U.S.S.R. Baltic Sea coast, along the borders between Finland and the U.S.S.R. and between Norway and the U.S.S.R. to the point 70°N 32°E, then along the 32°E meridian to the North Pole.

(MOD) 27/108
Aer2

Sub-Area 1D

From the junction of the borders of the U.S.S.R., Hungary and Roumania, westward along the southern borders of Hungary and Austria to the border between Switzerland and Italy, and the border between France and Italy to the Mediterranean Sea. Thence to 43°N 10°E to 41°N 10°E to 41°N 07°E, thence along the 07°E meridian to the North African coast. Then along the North African coast including Tunis, Tripoli, Benghazi, to the coastal border between Libya and the Arab Republic of Egypt. Thence along the coast to Alexandria, then to Cairo, and along the Cairo parallel to the 40°E meridian. North along the 40°E meridian to the intersection with the border between the Syrian Arab Republic and the Republic of Iraq and along this border up to the Turkish border. Then along the border between Turkey and the Republic of Iraq, Iran and the U.S.S.R. up to the Black Sea Coast. Thence along the Black Sea Coast of

Turkey to intersect the 30°E meridian. Along the 30°E meridian to the border of Roumania and the U.S.S.R., thence along this border to the junction of the borders of the U.S.S.R., Hungary and Roumania.

MOD 27/109 Aer2 *Sub-Area 1E*

From the point 50°N 20°W, through the points 40°N 20°W, 40°N 50°W, 30°N 39°W, 30°N 10°W, 31°N 10°W, to the point 31°N 10°E. Then along the border between Libya and Tunisia to the Mediterranean, thence along the Tunisian coast to intersect the 10°E meridian. Thence along this meridian to the point 43°N 10°E; thence to the borders between Italy and France and between Italy and Switzerland, Austria and Switzerland, Austria and Liechtenstein, Austria and Switzerland, Switzerland and the Federal Republic of Germany, and between France and the Federal Republic of Germany, France and Luxembourg, and France and Belgium to the Channel coast. Thence west through the territorial waters between the Channel Islands and the French coast to the points 50°N 10°W and 50°N 20°W.

(MOD) 27/110 Aer2

Regional and Domestic Air Route Area-2
(RDARA-2)

From the North Pole along the 32°E meridian to the 70°N parallel. Then along the border between Norway and the U.S.S.R. and Finland and the U.S.S.R. to the Baltic coast. Along the territorial waters of the U.S.S.R. Baltic coast to the border between the U.S.S.R. and Poland. Thence along the border between the U.S.S.R. and the following countries: Poland, the Czechoslovak Socialist Republic, Hungary and Roumania, to the Black Sea coast at the intersection of the 30°E meridian. Then along the 30°E meridian to the Black Sea coast of Turkey. Along the Black Sea coast of Turkey to the junction of the borders of Turkey and the U.S.S.R. Thence along this common border and the Iran-U.S.S.R. border to Caspian Sea. Then along the Iran Caspian Sea coast and the southern border of the U.S.S.R. to the intersection of the Mongolia-People's Republic of China-U.S.S.R. borders at approximately 49°N 88°E. Then along the 88°E meridian to 55°N. Then along the 55°N parallel to 60°E, and along the 60°E meridian to the North Pole.

(MOD) 27/111 Aer2 *Sub-Area 2A*

From the North Pole along the 32°E meridian to 70°N. Then along the border between Norway and the U.S.S.R., and Finland and the U.S.S.R. to the Baltic coast, and along the territorial waters of the U.S.S.R. Baltic coast to the point 55°N 20°E, and thence to Moscow. Then to 55°N 60°E, and along the 60°E meridian to the North Pole.

. . . .

(MOD) 27/112 Aer2 [*Does not concern the English text*]

. . . .

Replace Regulation No. 27/113 by the following new text:

MOD) **27/113 Aer2** *Sub-Area 2C*

From the point 55°N 60°E, to Moscow, to 55°N 20°E. Thence south along the border between the U.S.S.R. and Poland. Thence along the border between the U.S.S.R. and the following countries: Poland, the Czechoslovak Socialist Republic, Hungary and Roumania, to the Black Sea coast at the meridian 30°E. Along the meridian 30°E to the Black Sea coast of Turkey. Along this coastline to the junction of the border between Turkey and the U.S.S.R. Thence along this common border and the Iran-U.S.S.R. border to the Caspian Sea, then along the south coast of the Caspian Sea and thence north along the East Caspian Sea coast and through the point 47°N 53°E to 55°N 60°E.

……

D) **27/114 Aer2** *[Does not concern the English text]*

) **27/115 Aer2** *[Does not concern the English text]*

) **27/116 Aer2** *[Concerns the Spanish text only]*

27/117 Aer2 *[Does not concern the English text]*

……

Replace numbers 27/118, 27/119, 27/120, 27/121, 27/122 and 27/123 by the following new texts:

(MOD) 27/118
Aer2

Regional and Domestic Air Route Area-4
(RDARA-4)

From the point 30°N 39°W, and through the points 10°N 20°W, 05°S 20°W, to the point 05°S 12°E. Thence along the border between People's Republic of Congo and the People's Republic of Angola, then along the northern border of the Republic of Zaire, and the borders of the People's Republic of Congo, of the Central African Empire and the Sudan. Thence north along the western border of the Sudan. Along the western border of the Arab Republic of Egypt, northwards to the Mediterranean and along the Mediterranean and Atlantic coasts of North Africa to the point 30°N 10°W. West along the 30°N parallel to close the area at 30°N 39°W.

(MOD) 27/119
Aer2

Sub-Area 4A

From the point 30°N 39°W to 21°N 31°W. Thence to Gao and to Zinder. From Zinder, along the northern border of Nigeria, to a point west of N'Djamena. Then along the parallel to 12°N 22°E. Thence north along the western border of the Sudan, and along the western border of the Arab Republic of Egypt to the Mediterranean. Along the North African Mediterranean coast and Atlantic coast to a point 30°N 10°W. Thence along the 30°N parallel to close the sub-area at 30°N 39°W.

MOD 27/120
Aer2

Sub-Area 4B

From the point 21°N 31°W, through the points 10°N 20°W, 05°S 20°W to 05°S 12°E. Thence along the southern border of the People's Republic of the Congo and the Central African Empire to the junction between the Republic of Zaire, the Sudan and the Central African Empire. Along the western border of the Sudan to the point 12°N 22°E. Thence along the N'Djamena parallel to the Nigerian border. Then westward along this border to the point 13°12'N 10°45'E, through Zinder and Gao, to the point 21°N 31°W.

(MOD) 27/121
Aer2

Regional and Domestic Air Route Area-5
(RDARA-5)

From the point 41°N 40°E to the point 37°N 40°E. Then along the border between Turkey and the Syrian Arab Republic to the Mediterranean coast. Thence to the common border of Libya and the Arab Republic of Egypt on the North African coast excluding Cyprus. Southward along the western border of the Arab Republic of Egypt, and the Sudan to the border of Kenya. Thence east along the northern border of Kenya, then south along the border between Kenya and Somalia and to the East African coast at 02°S 41°E. Then through the point 02°S 73°E to 37°N 73°E. Then east along the border between the Republic of Afghanistan and Pakistan, and west along the southern border of the U.S.S.R. to the Caspian Sea. Then along the northern border of Iran and Turkey to close the area at 41°N 40°E.

MOD 27/122 Aer2 *Sub-Area 5A*

From the point 37°N 40°E, along the border between Turkey and the Syrian Arab Republic to the Mediterranean coast. Thence to the Libyan-Egyptian border on the North African coast, excluding Cyprus. Southward, along the western border of the Arab Republic of Egypt and east along the common border of the Arab Republic of Egypt and the Sudan to 24°N 37°E. Then through the points 11°45′N 42°E, 11°45′N 55°E, 20°N 52°E, to the point 26°N 52°E. Thence along the border between Iran and the Republic of Iraq, and the border between the Republic of Iraq and Turkey, to the point 37°N 40°E.

(MOD) 27/123 Aer2 *Sub-Area 5B*

From the point 41°N 40°E to 37°N 40°E. Thence east along the borders between Turkey and the Syrian Arab Republic, and Turkey and the Republic of Iraq, and along the border between the Republic of Iraq and Iran to the point 30°N 49°E. Thence along the middle of the Persian Gulf through the points 26°N 52°E and 24°N 60°E, to Bombay. Then to 37°N 73°E. Then east along the border between the Republic of Afghanistan and Pakistan, then west along the southern border of the U.S.S.R., to the Caspian Sea. Then along the northern border of Iran and Turkey to close the sub-area at 41°N 40°E.

……

(MOD) 27/124 Aer2 [*Concerns the Spanish text only*]

……

Replace number 27/125 by the following new text:

(MOD) 27/125 Aer2 *Sub-Area 5D*

From the junction of the Arab Republic of Egypt, Libya and the Sudan southward along the western border of Sudan to the border of Kenya. Thence along the northern border of Kenya. Then south along the border between Kenya and Somalia to the east African coast, at the point 02°S 42°E. Then through the points 02°S 54°E, 13°N 54°E, 13°N 52°E to the point 12°N 44°E. Thence northwest along the middle of the Red Sea to 24°N 37°E. Thence along the southern border of the Arab Republic of Egypt to close the sub-area.

Replace numbers 27/127 and 27/128 by the following new texts:

(MOD) 27/127 Aer2 *Sub-Area 6A*

From the point 37°N 75°E, along the border between Pakistan and the Republic of Afghanistan, and Iran and Pakistan to the point 23°N 61°E. Thence to Bombay. From Bombay to 24°N 80°E. Thence to Calcutta. Thence along the coast of

Bangladesh and Burma to reach the border between Burma and Thailand. North along this border and that between Burma and Lao People's Democratic Republic. Thence along the border between the People's Republic of China and Burma. Thence westward along the southern border of the People's Republic of China to the point 37°N 75°E.

MOD **27/128 Aer2** *Sub-Area 6B*

From the point 39°49′41″N 124°10′06″E, through the points 39°31′51″N 124°06′31″E, 39°N 124°E to the point 32°30′N 124°E. Between the point 32°30′N 124°E and the point 25°N 123°E, the limit of this Sub-Area is undefined. From the point 25°N 123°E, through the points 21°N 121°30′E, 20°N 120°E, 20°N 176°W, 50°N 164°E, 43°N 147°E, thence west between the territorial waters of Japan and the U.S.S.R. and along the border between the Democratic People's Republic of Korea and the U.S.S.R., and then the border between the People's Republic of China and the Democratic People's Republic of Korea, to the point 39°49′41″N 124°10′06″E.

Replace numbers 27/130, 27/131 and 27/132 by the following new texts:

MOD **27/130 Aer2** *Sub-Area 6D*

From the junction of the borders of the People's Republic of China, India and Burma, south along the India–Burma and Bangladesh–Burma borders to the Bay of Bengal. Along the coast of Burma to its southernmost point, then to Weh Island (off the north coast of Sumatra). Then to the point 02°S 92°E, and through the point 10°S 92°E to 10°S 110°E. Then eastward to 10°S 141°E extending northward to 00° 141°E and then to 04°N 130°E through the point 20°N 130°E to 20°N 113°E. Thence, south around the Island of Hainan, and along the border between the People's Republic of China, Viet Nam, the Lao People's Democratic Republic and Burma, to close the Sub-Area at the junction of the borders of the People's Republic of China, India and Burma.

(MOD) **27/131 Aer2** *Sub-Area 6E*

From the point 20°N 73°E, and through the points 02°S 73°E, 02°S 92°E, through Weh Island (off the north coast of Sumatra) to 10°N 97°E. Thence along the coasts of Burma, Bangladesh and India to Calcutta. Then through the points 24°N 80°E to 20°N 73°E.

MOD 27/132 Aer2 *Sub-Area 6F*

From the point 25°N 123°E, 21°N 121°30′E, 20°N 120°E, 20°N 113°E, thence south around the Island of Hainan and along the People's Republic of China-Viet Nam, People's Republic of China-Lao People's Democratic Republic and People's Republic of China-Burma borders to the junction of the borders of the People's Republic of China, India and Burma, south along the India-Burma and Bangladesh-Burma borders to the Bay of Bengal. Along the coast of Burma to its southernmost point then to Weh Island (off the north coast of Sumatra). Then to the point 02°S 92°E and through the point 10°S 92°E to 10°S 110°E. Then northward along 110°E meridian, thence along the boundary of Sub-Area 6C to the points 20°N 130°E, 43°N 147°E, thence westward between the territorial waters of Japan and the U.S.S.R. and along the border between the Democratic People's Republic of Korea and the U.S.S.R., then the border between the People's Republic of China and the Democratic People's Republic of Korea, to the points 39°49′41″N 124°10′06″E, 39°31′51″N 124°06′31″E, 39°N 124°E, then to the point 32°30′N 124°E.

Between the points 32°30′N 124°E and 25°N 123°E, the limit of this Sub-Area is undefined.

After number 27/132 add the following new number:

ADD 27/132A Aer2 *Sub-Area 6G*

From the point 32°30′N 124°E northward to 39°N 124°E, 39°31′51″N 124°06′31″E then to 39°49′41″N 124°10′06″E on the border between the People's Republic of China and the Democratic People's Republic of Korea. Then along the border of the People's Republic of China to the junction of the border with India and Burma. Thence southward along the India-Burma and Bangladesh-Burma borders to the Bay of Bengal. Along the coast of Burma to its southernmost point. Then to Weh Island (off the north coast of Sumatra). Then to the point 02°S 92°E and through the point 10°S 92°E to 10°S 110°E. Then eastward to 10°S 141°E extending northward to 00°141°E and then to 04°N 130°E through the point 20°N 130°E to 20°N 120°40′E. Thence northward to the points 21°N 121°30′E and 25°N 123°E.

Between the points 25°N 123°E and the point 32°10′N 124°E, the limit of this Sub-Area is undefined.

In the area where Sub-Areas 6D, 6F and 6G are common, the frequencies allotted to Sub-Area 6G shall be used only by the aeronautical stations of the People's Republic of China; the frequencies allotted to Sub-Areas 6D and 6F will be used only by the aeronautical stations of the other administrations in the common area. Also in this common area, the operational use by the People's Republic of China of the frequencies allotted to Sub-Area 6G shall be within the area defined by a line starting at 21°32′52″N 108°E, passing through the points 20°N 108°E, 20°N 107°E, 18°N 107°E, 18°N 108°E, 15°N 110°E, 10°N 110°E, 06°N 108°E, 03°30′N 112°E, 04°N 113°E, 08°N 116°E, 10°N 118°E, 14°N 119°E, 18°N 119°E to 20°N 120°40′E and thence along the limit of Sub-Area 6D to 21°32′52″N 108°E.

Replace number 27/133 by the following new text:

MOD 27/133
Aer2

Regional and Domestic Air Route Area-7
(RDARA-7)

From the South Pole along the 20°W meridian to 05°S. Then along the 05°S parallel to 12°E. Thence along the border between People's Republic of Congo and People's Republic of Angola, then along the northern border of the Republic of Zaire, along the border between Uganda and Sudan, and the borders between Kenya and Sudan, Ethiopia and Somalia, to the point 02°S 42°E. Then to 02°S 60°E and along the 60°E meridian to 11°S, then through the points 11°S 65°E, 40°S 65°E, 40°S 60°E to the South Pole.

. . . .

(MOD) 27/134
Aer2
[*Concerns the Spanish text only*]

. . . .

Replace numbers 27/135, 27/136, 27/137 and 27/138 by the following new texts:

MOD 27/135
Aer2
Sub-Area 7B

From the point 05°S 10°E to 05°S 12°E. Thence along the border between People's Republic of Congo and People's Republic of Angola, then along the northern border of the Republic of Zaire, to the junction of the borders of Uganda, Republic of Zaire and Sudan. Thence along the eastern borders of the Republic of Zaire, the Republic of Rwanda, the Republic of Burundi, and the Republic of Zaire. Thence along the southern borders of the Republic of Zaire and the People's Republic of Angola to the coast of the South Atlantic. Thence to the point 17°S 10°E, and then to the point 05°S 10°E.

(MOD) 27/136
Aer2
Sub-Area 7C

From the junction of the borders of Uganda, Republic of Zaire and Sudan along the western borders of Uganda and Tanzania, and then along the southern border of Tanzania to the coast. Thence through the points 11°S 41°E, 11°S 60°E, 02°S 60°E, to 02°S 41°E and thence to the east coast of Africa. Then north along the eastern border of Kenya, then west along the northern borders of Kenya and Uganda to close the sub-area at the junction of the borders of the Republic of Zaire, Sudan and Uganda.

MOD 27/137
Aer2
Sub-Area 7D

From the border between Tanzania and Mozambique on Lake Nyasa, south along the west border of Mozambique to the east coast of Africa, then through the points 27°S 33°E, 40°S 33°E, 40°S 65°E, 11°S 65°E, to 11°S 41°E. Thence along the northern border of Mozambique to Lake Nyasa.

(MOD) 27/138 Aer2 *Sub-Area 7E*

From the point 17°S 10°E, and through the points 40°S 10°E, 40°S 33°E, to 27°S 33°E. Thence along the west border of Mozambique and the part of the western border of Tanzania as far as the northern point of Lake Nyasa. Thence along the borders between Malawi and Tanzania and between Zambia and Tanzania and along the borders between the Republic of Zaire and Zambia, the People's Republic of Angola and Zambia, and the People's Republic of Angola and Namibia to the coast at the point 17°S 10°E.

After number 27/138 add the following new number:

ADD 27/138A Aer2 *Sub-Area 7F*

From the point 05°S 10°E to 05°S 12°E, along the border between the People's Republic of the Congo and the People's Republic of Angola to the junction point of the borders of the People's Republic of the Congo, the People's Republic of Angola, and the Republic of Zaire. Thence along the border between the People's Republic of Angola and the Republic of Zaire until the coast of the Atlantic, along the coastline until the Zaire River and thence along the northern, eastern and southern border of the People's Republic of Angola to the coast of the South Atlantic. Thence to the point 17°S 10°E and then to the point 05°S 10°E.

Replace number 27/139 by the following new text:

MOD 27/139 Aer2

Regional and Domestic Air Route Area-8
(RDARA-8)

From the South Pole along the 60°E meridian to 40°S then through the points 40°S 65°E, 11°S 65°E, 11°S 60°E, 02°S 60°E, 02°S 92°E, 10°S 92°E, to 10°S 110°E. Then along the 110°E meridian to the South Pole.

Delete number 27/140.

Replace number 27/141 by the following new text:

MOD 27/141 Aer2

Regional and Domestic Air Route Area-9
(RDARA-9)

From the South Pole along the 160°E meridian to 27°S. Then through the points 19°S 153°E, 10°S 145°E, 10°S 141°E, 00° 141°E, 00° 160°E, 03°30′N 160°E, 03°30′N 120°W. Then along the 120°W meridian to the South Pole.

Delete number 27/142.

Replace number 27/143 by the following new text:

MOD **27/143**
Aer2 *Sub-Area-9B*

From the point 00° 141°E through points 10°S 141°E, 10°S 145°E, 27°S 160°E, 27°S 157°W, 03°30′N 157°W, 03°30′N 160°E, 00° 160°E to the point 00° 141°E.

. . . .

(MOD) **27/144**
Aer2 [*Concerns the Spanish text only*]

. . . .

Replace number 27/145 by the following new text:

MOD **27/145**
Aer2 *Sub-Area 9D*

From the South Pole along the 160°E meridian to 27°S. Then through the point 27°S 170°W and along the 170°W meridian to the South Pole.

Replace the title preceding number 27/146 and number 27/146 by the following new texts:

ADD **27/145A**
Aer2

Regional and Domestic Air Route Area-10
(RDARA-10)

From the point 50°N 164°E to 66°N 169°W. Then along the 169°W meridian to the North Pole. Then through the points 82°N 30°E, 82°N 00°, 73°N 00°, 73°N 15°W. Then along the 15°W meridian to 72°N. Then through the points 40°N 50°W, 40°N 65°W to 44°30′N 73°W, 41°N 81°W, 41°N 88°W, 48°N 91°W, 48°N 127°W, 50°N 130°W, then westward to the point 50°N 164°E.

MOD **27/146**
Aer2 *Sub-Area 10A*

From the point 50°N 164°E to 66°N 169°W, along the 169°W meridian to the North Pole, along the 130°W meridian to 50°N, then westward to the point 50°N 164°E.

. . . .

(MOD) **27/147**
Aer2 [*Concerns the Spanish text only*]

(MOD) **27/148** [*Concerns the Spanish text only*]
Aer2

(MOD) **27/149** [*Concerns the Spanish text only*]
Aer2

(MOD) **27/150** [*Concerns the Spanish text only*]
Aer2

……

After number 27/150 add the following new number:

ADD **27/150A** *Sub-Area 10F*
Aer2

From the North Pole through the points 82°N 30°E, 82°N 00°, 73°N 00°, 73°N 20°W, 70°N 20°W, 63°30′N 39°W, 58°30′N 43°W, 58°30′N 50°W, 63°30′N 55°44′W, 65°30′N 58°39′W, 74°N 68°18′W, 76°N 76°W, 78°N 75°W, 82°N 60°W to the North Pole.

Replace the title preceding number 27/151 and the numbers 27/151 and 27/152 by the following new texts:

ADD **27/150B**
Aer2

Regional and Domestic Air Route Area-11
(RDARA-11)

From the point 29°N 180° through the points 50°N 164°E, 50°N 127°W. Then along the border between the United States of America and Canada to 46°N 67°W, then to 40°N 65°W, 40°N 50°W, 25°N 35°W, 25°N 98°W, 33°N 119°W, 33°N 153°W, 29°N 153°W to the point 29°N 180°.

MOD **27/151** *Sub-Area 11A*
Aer2

From the point 29°N 180°, through the points 50°N 164°E, 50°N 130°W, 33°N 130°W, 33°N 153°W, 29°N 153°W, to the point 29°N 180°.

MOD **27/152** *Sub-Area 11B*
Aer2

From the point 50°N 130°W and through the points 33°N 130°W, 33°N 119°W, 25°N 98°W, 25°N 65°W, 40°N 65°W, 46°N 67°W. Then along the border between the United States of America and Canada through 50°N 127°W, to the point 50°N 130°W.

After number 27/152 add the following new number:

ADD 27/152A
Aer2
Sub-Area 11C

From the point 25°N 65°W and through the points 40°N 65°W, 40°N 50°W, 25°N 35°W, to the point 25°N 65°W.

Replace the title preceding number 27/153 and the numbers 27/153, 27/154, 27/155 and 27/156 by the following new texts:

ADD 27/152B
Aer2

Regional and Domestic Air Route Area-12
(RDARA-12)

From the point 03°30′N 170°W to the point 10°N 170°W, then along the boundary between ITU Regions 2 and 3 to 29°N 180°, and thence to 29°N 153°W, 33°N 153°W, through the points 33°N 120°W, 35°N 120°W, 32°N 104°W, 25°N 91°W, 26°N 91°W, 26°N 79°W, 27°N 79°W, 27°N 76°30′W, 25°N 70°W, 25°N 35°W and along the boundary between ITU Regions 1 and 2 to 00° 20°W. Thence through the points 00° 44°W, 04°24′N 50°39′W. Then along the boundaries between Brazil and the French Department of Guiana, Surinam, Guyana, Venezuela, Colombia to the junction of Brazil, Peru and Colombia then along the boundaries between Peru and Colombia and Peru and Ecuador to the point 04°S 93°W. Then to the point 05°S 93°W and through the points 05°S 120°W, 03°30′N 120°W to the point 03°30′N 170°W.

(MOD) 27/153
Aer2
Sub-Area 12A

From the point 03°30′N 170°W to the point 10°N 170°W, then along the boundary between ITU Regions 2 and 3 to 29°N 180°, and thence through the points 29°N 153°W, 03°30′N 153°W to the point 03°30′N 170°W.

(MOD) 27/154
Aer2
Sub-Area 12B

From the point 03°30′N 153°W to 33°N 153°W, through the points 33°N 120°W, 17°N 115°W, 14°N 93°W, 02°N 86°W, 02°N 93°W, 05°S 93°W, 05°S 120°W, 03°30′N 120°W, to the point 03°30′N 153°W.

(MOD) 27/155
Aer2
Sub-Area 12C

From the point 33°N 120°W, through the points 35°N 120°W, 32°N 104°W, 25°N 91°W, 23°N 83°W, 22°N 83°W, 13°N 90°W, 16°N 116°W, to the point 33°N 120°W.

MOD 27/156 Aer2 *Sub-Area 12D*

From the point 20°N 91°W, through the points 26°N 91°W, 26°N 79°W, 27°N 79°W, 27°N 76°30′W, 26°N 73°W, 17°N 58°W, to 10°N 58°W. Thence through Panama City, Colon, Swan Island, and Belize City to the point 20°N 91°W.

. . . .

(MOD) 27/157 Aer2 *[Concerns the Spanish text only]*

. . . .

Replace numbers 27/158, 27/159, 27/160 and 27/161 by the following new texts:

MOD 27/158 Aer2 *Sub-Area 12F*

From the point 02°N 79°W to the point 08°N 83°W, then along the border between Panama and Costa Rica, through the points 10°N 83°W, 13°N 83°W, 13°N 70°W, 08°N 70°W, 06°N 67°W and 01°N 66°W. Then along the border between Brazil and Colombia to 04°S 70°W. Thence along the border between Colombia and Peru, continuing along the border between Colombia and Ecuador, to the point 02°N 79°W.

MOD 27/159 Aer2 *Sub-Area 12G*

From the point 07°N 73°W, through the points 14°N 73°W, 14°N 58°W, 01°31′N 58°W and along the borders of Brazil with Guyana, Venezuela, Colombia through the points 01°57′N 68°W, 05°N 69°W, to the point 07°N 73°W.

MOD 27/160 Aer2 *Sub-Area 12H*

From the point 05°N 70°W, through the points 08°45′N 60°W, 08°N 58°W, 08°N 49°W, 04°10′N 51°36′W, and along the borders of Brazil with the French Department of Guiana, Surinam, Guyana, Venezuela and Colombia to the junction of the borders of Brazil, Colombia and Peru, to the point 05°N 70°W.

(MOD) 27/161 Aer2 *Sub-Area 12I*

From the point 25°N 70°W, through the point 25°N 35°W and along the boundary between ITU Regions 1 and 2, to 00° 20°W. Thence through the points 00° 44°W, 08°N 54°W, 08°N 58°W, 17°N 58°W, to the point 25°N 70°W.

After number 27/161 add the following new number:

ADD **27/161A** *Sub-Area 12J*
Aer2

From the point 04°S 93°W, through the points 02°N 93°W, 02°N 79°W. Then along the border between Ecuador and Colombia to the junction with the borders of Colombia, Peru and Ecuador. Thence along the border between Peru and Ecuador to the point 04°S 93°W.

Replace the title preceding number 27/162 and the numbers 27/162, 27/163, 27/164 and 27/165 by the following new texts:

ADD **27/161B**
Aer2

Regional and Domestic Air Route Area-13
(RDARA-13)

From the South Pole along the 120°W meridian to 05°S. Then through the points 05°S 93°W, 04°S 82°W, and along the southern border of Ecuador, Colombia, Venezuela, Guyana, Surinam, the French Department of Guiana, to the point 04°24′N 50°39′W. Then through the points 04°24′N 47°W, 00° 32°W to the point 00° 20°W, and along the 20°W meridian to the South Pole.

(MOD) **27/162** *Sub-Area 13A*
Aer2

From the point 05°S 120°W through the points 05°S 93°W, 04°S 82°W, 19°S 81°W, 57°S 81°W, to 57°S 90°W. Thence to the South Pole to the point 05°S 120°W.

(MOD) **27/163** *Sub-Area 13B*
Aer2

From the point 29°S 111°W, through the points 24°S 111°W, 24°S 104°W, 29°S 104°W, to the point 29°S 111°W.

MOD **27/164** *Sub-Area 13C*
Aer2

From the point 15°S 47°W, through the points 20°S 44°W, 23°19′S 42°W, 25°S 45°W, 22°30′S 50°39′W, 19°52′S 58°W, and along the borders of Brazil with Paraguay, Bolivia, Peru, Colombia, Venezuela, Guyana, Surinam and the French Department of Guiana to 04°24′N 50°39′W, 04°24′N 47°W, to the point 15°S 47°W.

MOD 27/165 *Sub-Area 13D*
Aer2

From 11°S 69°30′W along the border between Bolivia and Brazil and through the point 20°10′S 58°W, along the border between Bolivia and Paraguay to 22°30′S 62°30′W. Then along the border between Bolivia and Argentina and through the point 23°S 67°W along the border between Bolivia and Chile and through the point 16°30′S 69°30′W following the border between Bolivia and Peru to the point 11°S 69°30′W.

After number 27/165 add the following new numbers:

ADD 27/165A *Sub-Area 13M*
Aer2

From the point 19°S 81°W, 04°S 82°W, 03°S 80°W, following the border between Peru and Ecuador and the border between Peru and Colombia to the point 11°S 69°30′W, along the border of Peru with Bolivia to 17°30′S 69°30′W, then along the border of Peru with Chile to the point 19°S 81°W.

ADD 27/165B *Sub-Area 13N*
Aer2

From the point 22°30′S 62°30′W along the border of Paraguay with Bolivia to 20°10′S 58°W, along the border of Paraguay with Brazil to 25°50′S 54°30′W and thence along the border of Paraguay with Argentina to the point 22°30′S 62°30′W.

Replace numbers 27/166, 27/167, 27/168, 27/169, 27/170, 27/171, 27/172 and 27/173 by the following new texts:

(MOD) 27/166 *Sub-Area 13E*
Aer2

From the point 32°S 81°W through the point 19°S 81°W, up to the intersection of the coast with the border between Chile and Peru, Bolivia and Argentina, to the point of intersection with 32°S and then to the point 32°S 81°W.

(MOD) 27/167 *Sub-Area 13F*
Aer2

From the point 57°S 81°W, through the point 32°S 81°W to the intersection of 32°S with the border between Chile and Argentina, through the points 52°S 67°W, 57°S 67°W, 57°S 40°W to the South Pole to the point 57°S 81°W.

(MOD) 27/168 *Sub-Area 13G*
Aer2

From the point 36°S 55°W to the intersection of 32°S with the border between Argentina and Chile, then north along the borders of Argentina with Bolivia, Paraguay, Brazil and Uruguay to the point 36°S 55°W.

(MOD) 27/169 Aer2 *Sub-Area 13H*

From the point 57°S 90°W and through the point 57°S 70°W to 52°S 70°W. Then along the border between Chile and Argentina to its intersection by 32°S and through the points 36°S 55°W, 57°S 55°W, 57°S 25°W to the South Pole and then to the point 57°S 90°W.

(MOD) 27/170 Aer2 *Sub-Area 13I*

From the point 40°S 50°W through the point 36°S 55°W and along the borders of Uruguay with Argentina and Brazil, then through the point 35°S 45°W to the point 40°S 50°W.

MOD 27/171 Aer2 *Sub-Area 13J*

From the point 15°S 47°W through the points 20°S 44°W, 23°19′S 42°W, 29°S 40°W, 35°S 45°W, and thence along the borders of Brazil with Uruguay, Argentina, Paraguay and Bolivia to the point 19°52′S 58°W, then through the point 18°S 57°37′W to the point 15°S 47°W.

MOD 27/172 Aer2 *Sub-Area 13K*

From the point 22°30′S 50°39′W and through the points 25°S 45°W, 29°S 40°W, 20°S 32°W, 00° 32°W, 04°24′N 47°W, 04°24′N 50°39′W to the point 22°30′S 50°39′W.

(MOD) 27/173 Aer2 *Sub-Area 13L*

From the point 00° 32°W through the points 00° 20°W, the South Pole, 57°S 55°W, 36°S 55°W, 40°S 50°W, 20°S 32°W, to the point 00° 32°W.

After 27/173 add the following new numbers:

ADD 27/173A Aer2

Regional and Domestic Air Route Area-14
(RDARA-14)

From the South Pole along the 110°E meridian to 10°S. Then through the points 10°S 145°E, 19°S 153°E, 27°S 160°E. Then along the 160°E meridian to the South Pole.

ADD 27/173B Aer2 *Sub-Area 14A*

From the South Pole along the 110°E meridian to 19°S. Then through the points 19°S 118°E, 24°S 120°E, 24°S 131°E. Then along the 131°E meridian to the South Pole.

ADD **27/173C** *Sub-Area 14B*
Aer2

From the point 19°S 110°E to the point 10°S 110°E, thence through 10°S 131°E, 24°S 131°E, 24°S 120°E, 19°S 118°E to the point 19°S 110°E.

ADD **27/173D** *Sub-Area 14C*
Aer2

From the point 24°S 131°E to the point 10°S 131°E, thence through 10°S 139°E, 24°S 139°E to the point 24°S 131°E.

ADD **27/173E** *Sub-Area 14D*
Aer2

From the South Pole along the 131°E meridian to 24°S, then through the points 24°S 139°E, 27°S 139°E, 27°S 142°E, 34°S 142°E, 34°S 139°E. Then along the 139°E meridian to the South Pole.

ADD **27/173F** *Sub-Area 14E*
Aer2

From the point 24°S 139°E along the 139°E meridian to 10°S, then through the points 10°S 145°E, 19°S 153°E to the point 24°S 139°E.

ADD **27/173G** *Sub-Area 14F*
Aer2

From the point 27°S 139°E along the 139°E meridian to 24°S, then through the points 19°S 153°E, 27°S 160°E to the point 27°S 139°E.

ADD **27/173H** *Sub-Area 14G*
Aer2

From the South Pole along the 139°E meridian to 34°S, then through the points 34°S 142°E, 27°S 142°E, 27°S 160°E. Then along the 160°E meridian to the South Pole.

ARTICLE 3

Description of the Boundaries of the VOLMET Allotment Areas and VOLMET Reception Areas

VOLMET Area — AFRICA-INDIAN OCEAN (AFI-MET)

Replace numbers 27/174 and 27/175 by the following new texts:

MOD **27/174** **Aer2** *The AFI-MET allotment area* is defined by a line drawn from the point 29°N 20°W, through the points 37°N 03°W, 37°N 36°E, 30°N 35°E, 10°N 52°E, 22°S 60°E, 35°S 35°E, 35°S 15°E, 08°S 15°W, 12°N 20°W, to the point 29°N 20°W.

MOD **27/175** **Aer2** *The AFI-MET reception area* is defined by a line drawn from the point 37°N 03°W, through the points 37°N 36°E, 30°N 35°E, 10°N 52°E, 10°N 100°E, the South Pole, the points 29°N 40°W, 29°N 20°W, to the point 37°N 03°W.

Replace the title preceding number 27/176 and the numbers 27/176 and 27/177 by the following new texts:

MOD

VOLMET Area — NORTH ATLANTIC (NAT-MET)

MOD **27/176** **Aer2** The *NAT-MET allotment area* is defined by a line drawn from the point 41°N 78°W, through the points 51°N 55°W, 24°N 50°W, 24°N 74°W, to the point 41°N 78°W.

MOD **27/177** **Aer2** The *NAT-MET reception area* is defined by a line drawn from the point 24°N 97°W, through the points 24°N 85°W, 75°N 85°W, 75°N 20°W, 00° 20°W, 00° 95°W, to the point 24°N 97°W.

Replace the title preceding number 27/178 and the numbers 27/178 and 27/179 by the following new texts:

MOD

VOLMET Area — EUROPE (EUR-MET)

MOD **27/178** **Aer2** The *EUR-MET allotment area* is defined by a line drawn from the point 33°N 12°W, through the points 54°N 12°W, 70°N 00°, 74°N 40°E, 40°N 36°E, 29°N 35°30'E, 32°N 13°E, to the point 33°N 12°W.

MOD **27/179** **Aer2** The *EUR-MET reception area* is defined by a line drawn from the point 15°N 20°W, through the points 40°N 50°W, 75°N 50°W, 75°N 45°E, 15°N 45°E, to the point 15°N 20°W.

Replace the title preceding number 27/180 and the numbers 27/180 and 27/181 by the following new texts:

MOD

VOLMET Area – MIDDLE EAST
(MID-MET)

MOD **27/180** **Aer2** The *MID-MET allotment area* is defined by a line drawn from the point 50°N 80°E, through the points 29°N 80°E, 27°N 85°E, 16°N 78°E, 22°N 56°E, 16°N 42°E, 30°N 30°E, 51°N 30°E, 57°N 37°E, to the point 50°N 80°E.

MOD **27/181** **Aer2** The *MID-MET reception area* is defined by a line drawn from the point 50°N 80°E, through the points 50°N 90°E, 35°N 90°E, 27°N 85°E, 16°N 78°E, 22°N 56°E, 16°N 42°E, 30°N 30°E, 51°N 30°E, 57°N 37°E, to the point 50°N 80°E.

After number 27/181 add the following new title and numbers:

ADD

VOLMET Area – NORTH CENTRAL ASIA
(NCA-MET)

ADD **27/181A** **Aer2** The *NCA-MET allotment area* is defined by a line drawn from the point 76°N 32°E, through the points 80°N 90°E, 75°N 168°W, 66°N 168°W, 48°N 160°E, 42°N 135°E, 50°N 130°E, 50°N 90°E, 35°N 70°E, 45°N 30°E, 60°N 20°E, to the point 76°N 32°E.

ADD **27/181B** **Aer2** The *NCA-MET reception area* is defined by a line drawn from the North Pole, through the points 40°N 168°W, 30°N 140°E, 35°N 70°E, 30°N 20°E, to the North Pole.

VOLMET Area – PACIFIC
(PAC-MET)

Replace numbers 27/182 and 27/183 by the following new texts:

MOD **27/182** **Aer2** The *PAC-MET allotment area* is defined by a line drawn from the point 52°N 132°E, through the points 63°N 149°W, 38°N 120°W, 50°S 120°W, 50°S 145°E, 28°S 145°E, 03°S 129°E, 22°N 112°E to the point 52°N 132°E.

MOD **27/183** **Aer2** The *PAC-MET reception area* is defined by a line drawn from the point 60°N 100°E through the points 75°N 160°W, 75°N 110°W, 65°S 110°W, 65°S 145°E, 28°S 145°E, 03°S 129°E, 05°N 80°E, 40°N 80°E, to the point 60°N 100°E.

VOLMET Area — SOUTH EAST ASIA
(SEA-MET)

Replace numbers 27/184 and 27/185 by the following new texts:

MOD **27/184** **Aer2** The *SEA-MET allotment area* is defined by a line drawn from the point 55°N 75°E, through the points 55°N 135°E, 45°N 135°E, 35°N 130°E, 10°N 130°E, 10°S 155°E, 35°S 155°E, 35°S 116°E, 08°N 75°E, 26°N 65°E, to the point 55°N 75°E.

MOD **27/185** **Aer2** The *SEA-MET reception area* is defined by a line drawn from the point 55°N 50°E, through the points 55°N 180°, 50°S 180°, 50°S 70°E, 08°N 70°E, 08°N 50°E, to the point 55°N 50°E.

After number 27/185 add the following new titles and numbers:

ADD

VOLMET Area — CARIBBEAN
(CAR-MET)

ADD **27/185A** **Aer2** The *CAR-MET allotment area* is defined by a line drawn from the point 30°N 110°W, through the points 30°N 75°W, 00° 50°W, following the equator to 00° 80°W to the point 30°N 110°W.

ADD **27/185B** **Aer2** The *CAR-MET reception area* is defined by a line drawn from the point 40°N 120°W, through the points 40°N 20°W, 25°S 20°W, 25°S 120°W, to the point 40°N 120°W.

ADD

VOLMET Area — SOUTH AMERICA
(SAM-MET)

ADD **27/185C** **Aer2** The *SAM-MET allotment area* is defined by a line drawn from the point 15°N 83°W, through the points 15°N 60°W, 05°S 35°W, 55°S 60°W, 55°S 83°W, to the point 15°N 83°W.

ADD **27/185D** **Aer2** The *SAM-MET reception area* is defined by a line drawn from the point 30°N 120°W through the point 30°N 00°, the South Pole, to the point 30°N 120°W.

After the new number 27/185D add the following new article:

ADD

ARTICLE 4

ADD

World-wide Allotment Areas

ADD **27/185E** *World-wide Area I*
Aer2

The boundaries of this allotment area comprise those of RDARAs 1, 2 and 3.

ADD **27/185F** *World-wide Area II*
Aer2

The boundaries of this allotment area comprise those of RDARAs 10, 11, 12A, 12B, 12C, and 12D.

ADD **27/185G** *World-wide Area III*
Aer2

The boundaries of this allotment area comprise those of RDARAs 6, 8, 9 and 14.

ADD **27/185H** *World-wide Area IV*
Aer2

The boundaries of this allotment area comprise those of RDARAs 12E to 12J inclusive and 13.

ADD **27/185I** *World-wide Area V*
Aer2

The boundaries of this allotment area comprise those of RDARAs 4, 5 and 7.

Section II

Replace the title of Section II by the following new title:

(MOD) **Allotment of Frequencies in the Aeronautical Mobile (R) Service**

ARTICLE 1

Replace number 27/186 by the following new text:

MOD **27/186**
Aer2 **Frequency Allotment Plan by Areas**

Notes:

Replace number 27/188 by the following new text:

MOD **27/188**
Aer2 *b)* The following list does not include the world-wide common (R) and (OR) frequencies of 3 023 kHz and 5 680 kHz. The allotment of these frequencies is shown in Article 2.

Replace number 27/189 by the following new text:

MOD 27/189
Aer 2

Zones *Áreas* Zonas	Bandes de fréquences/*Frequency bands*/Bandas de frecuencias (MHz)										
	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
	kHz	kHz	kHz	kHz	kHz	kHz	kHz	kHz	kHz	kHz	kHz
AFI	2 851 2 878	3 419 3 425 3 467	4 657		5 493 5 652 5 658	6 559 6 574 6 673	8 894 8 903		11 300 11 330	13 273 13 288 13 294	17 961
CAR	2 887	3 455			5 520 5 550	6 577 6 586	8 846 8 918		11 387 11 396	13 297	17 907
CEP	2 869	3 413	4 657		5 547 5 574	6 673	8 843	10 057	11 282	13 300	17 904
CWP	2 998	3 455	4 666		5 652 5 661	6 532 6 562	8 903	10 081	11 384	13 300	17 904
EA	3 016	3 485 3 491			5 655 5 670	6 571	8 897	10 042	11 396	13 297 13 303 13 309	17 907
EUR		3 479			5 661	6 598		10 084		13 288	17 961
INO		3 476			5 634		8 879			13 306	17 961
MID	2 944 2 992	3 467 3 473	4 669		5 658 5 667	6 625 6 631	8 918 8 951	10 018	11 375	13 288 13 312	17 961
NAT	2 872 2 899 2 962 2 971 3 016	3 476	4 675		5 598 5 616 5 649	6 622 6 628	8 825 8 831 8 864 8 879 8 891 8 906		11 279 11 309 11 336	13 291 13 306	17 946
NCA	3 004 3 019		4 678		5 646 5 664	6 592		10 096		13 303 13 315	17 958
NP	2 932				5 628	6 655 6 661		10 048	11 330	13 300	17 904
SAM	2 944	3 479	4 665		5 526	6 649	8 855	10 024 10 096	11 360	13 297	17 907
SAT	2 854 2 935	3 452			5 565	6 535	8 861		11 291	13 315 13 357	17 955
SEA		3 470 3 485			5 649 5 655	6 556	8 942	10 066	11 396	13 309 13 318	17 907
SP		3 467			5 559 5 643		8 867	10 084	11 327	13 300	17 904
I						6 556		10 021	11 363		
IB	2 860* 2 881* 2 890	3 458* 3 473* 3 488*			5 484 5 568	6 550 6 595		10 066			
IC	2 977 2 983	3 464 3 470	4 666		5 577 5 595	6 544	8 840		11 366		
ID	2 974 2 980 2 989	3 410 3 416 3 446	4 651		5 622 5 628 5 637	6 604 6 610	8 828	10 060	11 384		
IE	2 965	3 491			5 583	6 667		10 036			
2	2 938 2 950		4 696		5 556	6 583 6 601	8 846 8 855 8 888	10 015 10 045	11 297 11 360 11 390	13 321 13 357	17 964

* Voir/See/Véase 27/187

(voir suite/cont.)

(suite/cont.)

	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
2A	2 851* 2 863 2 869 2 875 2 881 2 887* 2 896 2 917 2 926 2 932 2 941	3 416* 3 422 3 434 3 440 3 455	4 657* 4 672 4 690		5 481 5 490 5 496 5 502 5 523 5 547 5 559 5 604	6 526 6 532 6 547 6 553 6 559 6 565 6 574 6 673	8 822* 8 876 8 909 8 939	10 048 10 054	11 276 11 285 11 294		
2B	2 857 2 869 2 875 2 881 2 887* 2 896 2 902 2 908 2 914 2 920 2 929	3 401 3 407 3 416* 3 422 3 428 3 449	4 660 4 672 4 681 4 690 4 693		5 490 5 496 5 502 5 508 5 520 5 526 5 550 5 574 5 595 5 607 5 613 5 619	6 526 6 532 6 562 6 568 6 577 6 655 6 661 6 667	8 819 8 834 8 864	10 009 10 024	11 279 11 333 11 339		
2C	2 857 2 863 2 866 2 884 2 893 2 902 2 908 2 914 2 920 2 926 2 932	3 401 3 407 3 428 3 434 3 440 3 449 3 455	4 657* 4 660 4 681 4 693		5 481 5 487 5 508 5 514 5 520 5 526 5 550 5 562 5 574 5 586 5 604	6 535 6 541 6 547 6 553 6 562 6 568 6 577 6 586	8 819 8 834 8 882 8 939	10 009 10 024 10 054	11 276 11 333 11 372		
3	2 893 2 935		4 693		5 556	6 583 6 589	8 846 8 954	10 087	11 318 11 336 11 360	13 267 13 321	17 952
3A	2 854 2 860 2 869 2 875 2 881 2 887* 2 896 2 905 2 911* 2 923* 2 959	3 404 3 416* 3 422 3 431* 3 443 3 452	4 672 4 684 4 690		5 484 5 490 5 496 5 502 5 511 5 517 5 568 5 580 5 601 5 625	6 526 6 532 6 538 6 544 6 550 6 556 6 607 6 613 6 619 6 649	8 837 8 861 8 900 8 942	10 045 10 057	11 309 11 324 11 330		
3B	2 851 2 854 2 872 2 878 2 884* 2 902 2 908 2 914 2 968*	3 401 3 407 3 413 3 419 3 425 3 431* 3 437* 3 443	4 657 4 681		5 493 5 499 5 505 5 514 5 520 5 526 5 550 5 562 5 580 5 601	6 529 6 538 6 544 6 559 6 568 6 577 6 595 6 625 6 631	8 822 8 852 8 861 8 879 8 957	10 024 10 039	11 285 11 291 11 327 11 372		
3C	2 851 2 860 2 866* 2 878 2 905 2 950 2 974 2 980 2 986	3 404 3 410 3 419 3 425 3 452	4 684		5 484 5 514 5 562 5 568 5 586 5 637 5 643	6 550 6 556 6 595 6 658 6 664 6 670	8 837 8 852 8 894 8 915	10 039	11 291 11 303 11 324 11 378		

(voir suite/cont.)

(suite/cont.)

	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
4						6 565	8 873			13 300	17 904
4A	2 926* 2 953	3 437 3 491	4 672*		5 547 5 559	6 526 6 532 6 616	8 816 8 837 8 858	10 039 10 081	11 282 11 318		
4B	2 866 2 893	3 443			5 481 5 574 5 604	6 553 6 577 6 598		10 063	11 324		
5							8 870 8 885	10 012	11 312 11 327	13 354	17 949 17 967
5A	2 986	3 452			5 577 5 583	6 544 6 664	8 822 8 915		11 288		
5B	2 911 2 968	3 431 3 488			5 511 5 568 5 625	6 550 6 595	8 912	10 093			
5C	2 905	3 452			5 583	6 544	8 822				
5D	2 899 2 971	3 482			5 526 5 550	6 535 6 547	8 843	10 048			
6							8 840		11 381	13 291	17 943
6A	2 872 2 923 2 947 3 001	3 479	4 657* 4 675		5 484 5 580 5 601	6 607 6 613 6 658	8 891 8 906 8 948	10 006 10 051 10 081*	11 321 11 357		
6B	2 857 2 920	3 479 3 488			5 502 5 595 5 625	6 607 6 613 6 619	8 864 8 885	10 021 10 093	11 339 11 366		17 955
6C	2 881 2 956	3 473	4 651		5 550 5 580	6 544 6 631	8 834 8 918	10 015			
6D	2 866 2 884	3 416			5 490 5 520 5 568 5 574 5 631	6 550 6 568 6 577 6 595	8 882 8 957		11 309 11 372		
6E	2 854 2 872 2 917 3 001	3 443	4 657* 4 675		5 514 5 526 5 550	6 583 6 655 6 661	8 861* 8 906 8 909	10 036 10 051 10 084	11 357 11 363		
6F	2 926 2 941	3 434 3 440			5 496 5 508	6 526 6 667	8 864 8 939	10 060	11 279 11 366		
6G	2 869* 2 875* 2 890 2 896* 2 899 2 902* 2 911* 2 917* 2 938* 2 953 2 962 2 968* 2 971 2 977 2 983 2 989 2 995	3 413* 3 422* 3 431* 3 437 3 446 3 449* 3 464 3 482	4 651* 4 663* 4 669* 4 672* 4 690* 4 696*		5 481 5 487 5 493* 5 499* 5 505* 5 511* 5 517* 5 523 5 547 5 553 5 559 5 565 5 571 5 577 5 583 5 592 5 598 5 604	6 529 6 535 6 541 6 547 6 553 6 559 6 565 6 574 6 580 6 586 6 598 6 604 6 610 6 616 6 622 6 628 6 634 6 649	8 816 8 825 8 831 8 843 8 858 8 867 8 870* 8 873 8 888* 8 912* 8 960	10 018* 10 054* 10 063*	11 276* 11 282* 11 288 11 294* 11 300* 11 306 11 315 11 369	13 270 13 276	17 913

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	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
					5 610 5 616 5 622 5 628* 5 634* 5 640*	6 652 6 673 6 682					
7					5 508	6 586	8 888		11 285	13 354	
7B	2 863 2 965	3 455			5 577 5 583	6 652	8 906	10 009			
7C	2 950	3 407			5 592	6 568 6 604	8 834	10 081	11 294		
7D	2 998				5 481			10 096			
7E	2 887	3 485			5 520	6 580 6 628	8 864		11 306		
7F	2 956	3 461			5 547 5 568	6 622	8 846 8 960				
9			4 696		5 583	6 553	8 846 8 852	10 018	11 339		
9B	2 860 2 905 2 929*	3 401* 3 419 3 425 3 476*	4 660		5 484 5 508 5 523 5 565	6 538 6 547 6 598 6 622	8 819 8 837 8 861 8 906	10 009 10 024 10 039	11 393		
9C	2 851	3 404 3 461	4 675		5 481	6 580	8 873	10 042	11 279 11 312		
9D	3 016	3 404			5 592	6 535	8 873		11 312		
10			4 696	5 454	5 604	6 553	8 819 8 834	10 006 10 012	11 333 11 390	13 285	17 910
10A	2 866 2 875 2 911 2 944 2 956 2 992	3 449 3 470		5 472 5 475	5 484 5 490 5 496 5 565 5 631	6 535 6 580 6 604	8 855 8 876	10 066	11 357 11 363 11 375		
10B	2 854 2 860	3 404 3 467 3 488	4 651 4 666 4 681 4 690 4 693	5 460 5 466	5 553 5 568 5 583	6 547 6 574 6 598	8 837 8 903 8 939				
10C	2 926 2 965	3 491	4 660 4 669	5 457	5 481 5 487 5 592 5 562 5 595	6 541 6 556 6 568	8 867				
10D	2 893 2 935	3 419 3 425 3 458	4 666 4 669 4 678	5 472 5 475	5 484 5 490 5 496 5 586 5 625	6 535 6 544 6 562	8 858 8 900				
10E	2 869 2 944 2 992	3 446 3 473	4 651 4 666 4 684	5 460	5 481 5 559 5 577	6 547 6 598	8 843 8 954		11 276		
10F	2 950		4 663	5 451	5 526	6 673	8 945	10 042			

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	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
11B	2 851 2 878 3 004 3 019	3 410 3 428 3 434 3 443	4 672	5 451 5 463 5 469	5 508 5 514 5 523 5 571	6 538 6 550 6 559 6 565	8 822 8 885 8 912	10 045 10 093	11 288 11 306	13 312	17 964
12		3 440			5 568			10 054			17 901
12A	2 950				5 604						
12C	2 920 2 980	3 401 3 464	4 693	5 460	5 484 5 490 5 496 5 502 5 589 5 613	6 535 6 571 6 592 6 622 6 628	8 816 8 948 8 957	10 021 10 039	11 324		
12D		3 407			5 562	6 673	8 876	10 015			
12E	2 860 2 956 2 998	3 461 3 488	4 681	5 454 5 475	5 481 5 487 5 583 5 595 5 604	6 547 6 553 6 598	8 852 8 873	10 063 10 090	11 381 11 393		
12F	2 893 2 956 2 965 2 998	3 461 3 488		5 451 5 475	5 508 5 556 5 583 5 604	6 532 6 553	8 873 8 894	10 090	11 297		
12G	2 875 2 956 2 998	3 461 3 488			5 484 5 523 5 559 5 646	6 526 6 616					
12H	2 956 2 998	3 461 3 488		5 451	5 583						
12J	2 860 2 902 2 926 2 965	3 419			5 481 5 496 5 619	6 535 6 547	8 954		11 381 11 384		
13										13 318	17 913
13A								10 048			17 967
13B								10 048			17 967
13C	2 863 2 869 2 992	3 413 3 458 3 473			5 490 5 514 5 553 5 571 5 577	6 541 6 556 6 562 6 568 6 580	8 819 8 834 8 843 8 939	10 042	11 327 11 375	13 309	
13D	2 914 2 983	3 425 3 467	4 660	5 460	5 562	6 622 6 628 6 673	8 867 8 912 8 957	10 084	11 318		
13E	2 851	3 491	4 651 4 663		5 481 5 583 5 604	6 553 6 577	8 858		11 303		17 967
13F	2 851 2 956 2 998	3 446 3 476	4 651 4 663	5 454	5 481 5 583 5 604	6 547 6 553	8 831 8 858 8 864	10 081	11 321 11 330		17 967
13G	2 872 2 971 3 016	3 434 3 470	4 675*	5 469 5 475	5 574	6 586 6 613	8 822 8 885 8 900	10 006 10 021 10 036	11 369		

(voir suite/cont.)

(suite/cont.)

	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
13H	2 899 2 965	3 455 3 485	4 657	5 463 5 472	5 484 5 547	6 598	8 825 8 906	10 036 10 045	11 282 11 300	13 267	
13I	2 860 2 878 2 887	3 419	4 678 4 693	5 451 5 466	5 496 5 523	6 574	8 873	10 051			
13J	2 857 2 863 2 878 2 890 2 920	3 410 3 428 3 458	4 684 4 696	5 451 5 454	5 559 5 568 5 577	6 550 6 559 6 580	8 816 8 843	10 012 10 018 10 042	11 276		
13K	2 863 2 932 3 004 3 019	3 401 3 458 3 464	4 663 4 672	5 463	5 481 5 547 5 577 5 604	6 547 6 553 6 580	8 843 8 849 8 945	10 009 10 018 10 042 10 060	11 339 11 366	13 309	
13M	2 908 2 977	3 437 3 449	4 660 4 690	5 463	5 502	6 574 6 628	8 837 8 867 8 903	10 066	11 378		
13N	2 986	3 443		5 457	5 508	6 604	8 828	10 093			
14	2 851 2 878	3 446 3 461 3 479			5 526 5 604	6 580 6 628	8 822 8 855 8 870	10 045 10 087	11 360	13 264	17 946
14A	2 950	3 413	4 678*			6 547 6 553	8 816 8 894				
14B		3 488*	4 684*			6 535 6 604 6 673	8 900 8 954				
14C	2 887	3 452	4 684*			6 541 6 586	8 885 8 912				
14D	2 950	3 407	4 693*		5 481	6 559 6 574	8 843 8 858				
14E		3 413				6 565 6 616	8 891 8 945				
14F		3 488				6 526 6 610	8 825 8 831				
14G	2 869 2 944		46.8*		5 481 5 550 5 580		8 876 8 957				
VAFI	2 860	3 404			5 499	6 538	8 852	10 057		13 261	
VCAR	2 950				5 580				11 315		
VEUR	2 998	3 413			5 640	6 580	8 957		11 378	13 264	
VMID	2 956				5 589		8 945		11 393		
VNAT	2 905	3 485			5 592	6 604	8 870	10 051		13 270 13 276	
VNCA		3 461	4 663		5 676			10 090		13 279	
VPAC	2 863					6 679	8 828			13 282	
VSAM	2 881				5 601			10 087		13 279	
VSEA	2 965	3 458			5 673	6 676	8 849		11 387	13 285	

(voir suite/cont.)

(suite/cont.)

	3	3.5	4.7	5.4 (Reg. 2)	5.6	6.6	9	10	11.3	13.3	18
W I	3010		4654 4687		5529 5532 5535 5541	6637 6643	8921 8924 8930 8936	10027 10030 10069 10072 10078	11345 11351	13324 13327 13333 13336 13342 13345 13351	17916 17922 17931
W II	3007 3013	3494 3497	4654 4687		5529 5538 5544	6637 6640 6646	8927 8933 8936	10027 10033 10075	11342 11348 11354	13330 13339 13348	17919 17925 17934 17940
W III	3007		4687			6637	8921 8930	10072 10078	11342 11351	13324 13333 13342 13351	17916 17922 17928 17934 17940
W IV	3010				5535 5541	6643	8924	10030 10069	11345	13327 13336 13345	17919 17928 17937
W V	3013				5532 5538 5544	6640 6646	8927 8933	10033 10075	11348 11354	13330 13339 13348	17925 17931 17937

ARTICLE 2

Frequency Allotment Plan
(in numerical order of frequencies)

General Notes:

Replace numbers 27/192, 27/193 and 27/194 by the following new texts:

MOD 27/192 Aer2 1. *Class of stations:* FA

Classes of emission: see Nos. 27/49-27/52.

Power: Unless otherwise indicated in the Plan, the power values for aeronautical and aircraft stations are those shown in Nos. 27/54-27/62.

Hours: H24, unless otherwise indicated.

MOD 27/193 Aer2 2. A frequency allotted on a "day-time basis" may be used during the period one hour after sunrise to one hour before sunset.

MOD 27/194 Aer2 3. A "common channel" is a channel allotted in common to two or more areas within interference distance of each other and its use is subject to agreement between the administrations concerned.

After number 27/194 add the following new number:

ADD 27/194A Aer2 4. The world-wide frequency allotments appearing in the tables at No. 27/189 and Nos. 27/195 to 27/207, except for carrier (reference) frequencies 3 023 kHz and 5 680 kHz, are reserved for assignment by administrations to stations operating under authority granted by the administration concerned, for the purpose of serving one or more aircraft operating agencies. Such assignments are to provide communications between an appropriate aeronautical station and an aircraft station anywhere in the world for exercising control over regularity of flight and for safety of aircraft. World-wide frequencies are not to be assigned by administrations for MWARA, RDARA and VOLMET purposes. Where the operational area of an aircraft lies wholly within a RDARA or Sub-RDARA boundary, frequencies allotted to those RDARAs and Sub-RDARAs shall be used.

Replace numbers 27/195 to 27/207 by the following new texts:

MOD 27/195
Aer 2

bandе/*band*/banda 2 850-3 025 kHz **3 MHz**

Fréquence kHz *Frequency kHz* Frecuencia kHz 1	Zone d'emploi autorisé ** *Authorized area of use* ** Zona de uso autorizado ** 2	Observations ** *Remarks* ** Observaciones ** 3
2851	M AFI R 2A 3B 3C 9C 11B 13E 13F 14	CC 3B 3C CC 13E 13F C001/2A
2854	M SAT R 3A 3B 6E 10B	CC 3A 3B
2857	R 2B 2C 6B 13J	CC 2B 2C
2860	R 1B 3A 3C 9B 10B 12E 12J 13I V VAFI	CC 3A 3C CC 12E 12J C001/1B
2863	R 2A 2C 7B 13C 13J 13K V VPAC	CC 2A 2C CC 13C 13J 13K
2866	R 2C 3C 4B 6D 10A	C001/3C
2869	M CEP R 2A 2B 3A 6G 10E 13C 14G	CC 2A 2B 3A C009/6G
2872	M NAT R 3B 6A 6E 13G	CC 6A 6E
2875	R 2A 2B 3A 6G 10A 12G	CC 2A 2B 3A C009/6G
2878	M AFI R 3B 3C 11B 13I 13J 14	CC 3B 3C CC 13I 13J
2881	R 1B 2A 2B 3A 6C V VSAM	CC 2A 2B 3A C001/1B
2884	R 2C 3B 6D	C001/3B
2887	M CAR R 2A 2B 3A 7E 13I 14C	CC 2A 2B 3A C001/2A 2B 3A
2890	R 1B 6G 13J	
2893	R 2C 3 4B 10D 12F	CC 2C 3
2896	R 2A 2B 3A 6G	CC 2A 2B 3A C009/6G
2899	M NAT R 5D 6G 13H	
2902	R 2B 2C 3B 6G 12J	CC 2B 2C 3B C009/6G
2905	R 3A 3C 5C 9B V VNAT	CC 3A 3C
2908	R 2B 2C 3B 13M	CC 2B 2C 3B
2911	R 3A 5B 6G 10A	C001/3A C010/6G
2914	R 2B 2C 3B 13D	CC 2B 2C 3B
2917	R 2A 6E 6G	C010/6G
2920	R 2B 2C 6B 12C 13J	CC 2B 2C

** Voir page 77 /See page 77 /Véase página 77.

(voir suite/cont.)

bande/*band*/banda 2 850-3 025 kHz **3 MHz**
(suite/cont.)

1	2	3
2923	R 3A 6A	C001/3A
2926	R 2A 2C 4A 6F 10C 12J	CC 2A 2C C001/4A
2929	R 2B 9B	C001/9B
2932	M NP R 2A 2C 13K	CC 2A 2C
2935	M SAT R 3 10D	
2938	R 2 6G	C009/6G
2941	R 2A 6F	
2944	M MID SAM R 10A 10E 14G	
2947	R 6A	
2950	R 2 3C 7C 10F 12A 14A 14D V VCAR	CC 2 3C CC 14A 14D
2953	R 4A 6G	
2956	R 6C 7F 10A 12E 12F 12G 12H 13F V VMID	CC 12E 12F 12G 12H
2959	R 3A	
2962	M NAT R 6G	
2965	R 1E 7B 10C 12F 12J 13H V VSEA	CC 12F 12J
2968	R 3B 5B 6G	C001/3B C009/6G
2971	M NAT R 5D 6G 13G	
2974	R 1D 3C	
2977	R 1C 6G 13M	
2980	R 1D 3C 12C	
2983	R 1C 6G 13D	
2986	R 3C 5A 13N	
2989	R 1D 6G	
2992	M MID R 10A 10E 13C	
2995	R 6G	
2998	M CWP R 7D 12E 12F 12G 12H 13F V VEUR	CC 12E 12F 12G 12H
3001	R 6A 6E	CC 6A 6E

(voir suite/cont.)

bande/*band*/banda 2 850-3 025 kHz **3 MHz**
(suite/cont.)

1	2	3
3 004	M NCA R 11B 13K	
3 007	W MONDIALE WORLDWIDE MUNDIAL	C100/II III
3 010	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
3 013	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
3 016	M EA NAT R 9D 13G	
3019	M NCA R 11B 13K	

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1	2	3
3 023	W MONDIALE WORLDWIDE MUNDIAL (R) et/*and*/y (OR)	Voir Partie II, Section II, article 3 See Part II, Section II, article 3 Véase Parte II, Sección II, artículo 3

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bande/*band*/banda 3 400-3 500 kHz **3.5 MHz**

1	2	3
3401	R 2B 2C 3B 9B 12C 13K	CC 2B 2C 3B C001/9B
3404	R 3A 3C 9C 9D 10B V VAFI	CC 3A 3C CC 9C 9D
3407	R 2B 2C 3B 7C 12D 14D	CC 2B 2C 3B
3410	R 1D 3C 11B 13J	
3413	M CEP R 3B 6G 13C 14A 14E V VEUR	CC 14A 14E C009/6G
3416	R 1D 2A 2B 3A 6D	CC 2A 2B 3A C001/2A 2B 3A
3419	M AFI R 3B 3C 9B 10D 12J 13I	CC 3B 3C
3422	R 2A 2B 3A 6G	CC 2A 2B 3A C001/6G C004/6G
3425	M AFI R 3B 3C 9B 10D 13D	CC 3B 3C

(voir suite/cont.)

bande/*band*/banda 3 400-3 500 kHz **3.5 MHz**
(suite/cont.)

1	2	3
3428	R 2B 2C 11B 13J	CC 2B 2C
3431	R 3A 3B 5B 6G	CC 3A 3B C001/3A 3B C009/6G
3434	R 2A 2C 6F 11B 13G	CC 2A 2C
3437	R 3B 4A 6G 13M	C001/3B
3440	R 2A 2C 6F 12	CC 2A 2C
3443	R 3A 3B 4B 6E 11B 13N	CC 3A 3B
3446	R 1D 6G 10E 13F 14	
3449	R 2B 2C 6G 10A 13M	CC 2B 2C C001/6G C004/6G
3452	M SAT R 3A 3C 5A 5C 14C	CC 3A 3C CC 5A 5C
3455	M CAR CWP R 2A 2C 7B 13H	CC 2A 2C
3458	R 1B 10D 13C 13J 13K V VSEA	CC 13C 13J 13K C001/1B
3461	R 7F 9C 12E 12F 12G 12H 14 V VNCA	CC 12E 12F 12G 12H
3464	R 1C 6G 12C 13K	
3467	M AFI MID SP R 10B 13D	CC AFI MID
3470	M SEA R 1C 10A 13G	
3473	M MID R 1B 6C 10E 13C	C001/1B
3476	M INO NAT R 9B 13F	C001/9B
3479	M EUR SAM R 6A 6B 14	
3482	R 5D 6G	
3485	M EA SEA R 7E 13H V VNAT	CC EA SEA
3488	R 1B 5B 6B 10B 12E 12F 12G 12H 14B 14F	CC 12E 12F 12G 12H CC 14B 14F C001/1B
3491	M EA R 1E 4A 10C 13E	CC 1E 4A
3494	W MONDIALE WORLDWIDE MUNDIAL	C100/II
3497	W MONDIALE WORLDWIDE MUNDIAL	C100/II

(voir suite/cont.)

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bande/*band*/banda 4 650-4 700 kHz **4.7 MHz**

1	2	3
4 651	R 1D 6C 6G 10B 10E 13E 13F	CC 13E 13F C001/6G
4 654	W MONDIALE WORLDWIDE MUNDIAL	C100/I II
4 657	M AFI CEP	
	R 2A 2C 3B 6A 6E 13H	CC 2A 2C C001/2A 2C CC 6A 6E C001/6A 6E
4 660	R 2B 2C 9B 10C 13D 13M	CC 2B 2C CC 13D 13M
4 663	R 6G 10F 13E 13F 13K V VNCA	CC 13E 13F 13K C001/6G
4 666	M CWP R 1C 10B 10D 10E	CC 10B 10D 10E
4 669	M MID SAM R 6G 10C 10D	CC 10C 10D C001/6G
4 672	R 2A 2B 3A 4A 6G 11B 13K	CC 2A 2B 3A C001/4A C001/6G
4 675	M NAT R 6A 6E 9C 13G	CC 6A 6E C001/13G
4 678	M NCA R 10D 13I 14A 14G	CC 14A 14G C001/14A 14G
4 681	R 2B 2C 3B 10B 12E	CC 2B 2C 3B
4 684	R 3A 3C 10E 13J 14B 14C	CC 3A 3C CC 14B 14C C001/14B 14C
4 687	W MONDIALE WORLDWIDE MUNDIAL	C100/I II III
4 690	R 2A 2B 3A 6G 10B 13M	CC 2A 2B 3A C001/6G
4 693	R 2B 2C 3 10B 12C 13I 14D	CC 2B 2C 3 C001/14D
4 696	R 2 6G 9 10 13J	C001/6C

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bandе/*band*/banda 5 450-5 480 kHz (Reg. 2) **5.4 MHz**

1	2	3
5 451	R 10F 11B 12F 12H 13I 13J	CC 12F 12H CC 13I 13J
5 454	R 10 12E 13F 13J	
5 457	R 10C 13N	
5 460	R 10B 10E 12C 13D	
5 463	R 11B 13H 13K 13M	
5 466	R 10B 13I	
5 469	R 11B 13G	
5 472	R 10A 10D 13H	
5 475	R 10A 10D 12E 12F 13G	CC 12E 12F

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bande/*band*/banda 5 480-5 680 kHz **5.6 MHz**

1	2	3
5 481	R 2A 2C 4B 6G 7D 9C 10C 10E 12E 12J 13E 13F 13K 14D 14G	CC 2A 2C CC 10C 10E CC 12E 12J CC 13E 13F CC 14D 14G
5 484	R 1B 3A 3C 6A 9B 10A 10D 12C 12G 13H	CC 3A 3C
5 487	R 2C 6G 10C 12E	
5 490	R 2A 2B 3A 6D 10A 10D 12C 13C	CC 2A 2B 3A
5 493	M AFI R 3B 6G	C002/6G
5 496	R 2A 2B 3A 6F 10A 10D 12C 12J 13I	CC 2A 2B 3A
5 499	R 3B 6G V VAFI	C002/6G
5 502	R 2A 2B 3A 6B 10C 12C 13M	CC 2A 2B 3A
5 505	R 3B 6G	C003/6G
5 508	R 2B 2C 6F 7 9B 11B 12F 13N	CC 2B 2C
5 511	R 3A 5B 6G	C002/6G
5 514	R 2C 3B 3C 6E 11B 13C	CC 3B 3C
5 517	R 3A 6G	C002/6G
5 520	M CAR R 2B 2C 3B 6D 7E	CC 2B 2C 3B
5 523	R 2A 6G 9B 11B 12G 13I	

(voir suite/cont.)

bande/*band*/banda 5 480-5 680 kHz **5.6 MHz**
(suite/cont.)

1	2	3
5 526	M SAM R 2B 2C 3B 5D 6E 10F 14	CC 2B 2C 3B
5 529	W MONDIALE WORLDWIDE MUNDIAL	C100/I II
5 532	W MONDIALE WORLDWIDE MUNDIAL	C100/I V
5 535	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
5 538	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
5 541	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
5 544	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
5 547	M CEP R 2A 4A 6G 7F 13H 13K	
5 550	M CAR R 2B 2C 3B 5D 6C 6E 14G	CC 2B 2C 3B
5 553	R 6G 10B 13C	
5 556	R 2 3 12F	CC 2 3
5 559	M SP R 2A 4A 6G 10E 12G 13J	
5 562	R 2C 3B 3C 10C 12D 13D	CC 3B 3C
5 565	M SAT R 6G 9B 10A	
5 568	R 1B 3A 3C 5B 6D 7F 10B 12 13J	CC 3A 3C
5 571	R 6G 11B 13C	
5 574	M CEP R 2B 2C 4B 6D 13G	CC 2B 2C
5 577	R 1C 5A 6G 7B 10E 13C 13J 13K	CC 13C 13J 13K
5 580	R 3A 3B 6A 6C 14G V VCAR	CC 3A 3B
5 583	R 1E 5A 5C 6G 7B 9 10B 12E 12F 12H 13E 13F	CC 5A 5C CC 12E 12F 12H CC 13E 13F
5 586	R 2C 3C 10D	
5 589	R 12C V VMID	
5 592	R 6G 7C 9D V VNAT	
5 595	R 1C 2B 6B 10C 12E	
5 598	M NAT R 6G	
5 601	R 3A 3B 6A V VSAM	CC 3A 3B
5 604	R 2A 2C 4B 6G 10 12A 12E 12F 13E 13F 13K 14	CC 2A 2C CC 12E 12F CC 13E 13F

(voir suite/cont.)

bande/*band*/banda 5 480-5 680 kHz **5.6 MHz**
(suite/cont.)

1	2	3
5 607	R 2B	
5 610	R 6G	
5 613	R 2B 12C	
5 616	M NAT R 6G	
5 619	R 2B 12J	
5 622	R 1D 6G	
5 625	R 3A 5B 6B 10D	
5 628	M NP R 1D 6G	C003/6G
5 631	R 6D 10A	
5 634	M INO R 6G	C002/6G
5 637	R 1D 3C	
5 640	R 6G V VEUR	C002/6G
5 643	M SP R 3C	
5 646	M NCA R 12G	
5 649	M NAT SEA	
5 652	M AFI CWP	
5 655	M EA SEA	CC EA SEA
5 658	M AFI MID	CC AFI MID
5 661	M CWP EUR	
5 664	M NCA	
5 667	M MID	
5 670	M EA	
5 673	V VSEA	
5 676	V VNCA	

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5 680	W MONDIALE WORLDWIDE MUNDIAL (R) et/*and*/y (OR)	Voir Partie II, Section II, article 3 See Part II, Section II, article 3 Véase Parte II, Sección II, artículo 3

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bande/*band*/banda 6 525-6 685 kHz **6.6 MHz**

1	2	3
6 526	R 2A 2B 3A 4A 6F 12G 14F	
		CC 2A 2B 3A
6 529	R 3B 6G	
6 532	M CWP R 2A 2B 3A 4A 12F	
		CC 2A 2B 3A
6 535	M SAT R 2C 5D 6G 9D 10A 10D 12C 12J 14B	
6 538	R 3A 3B 9B 11B V VAFI	
		CC 3A 3B
6 541	R 2C 6G 10C 13C 14C	
6 544	R 1C 3A 3B 5A 5C 6C 10D	
		CC 3A 3B CC 5A 5C
6 547	R 2A 2C 5D 6G 9B 10B 10E 12E 12J 13F 13K 14A	
		CC 2A 2C CC 12E 12J
6 550	R 1B 3A 3C 5B 6D 11B 13J	
		CC 3A 3C
6 553	R 2A 2C 4B 6G 9 10 12E 12F 13E 13F 13K 14A	
		CC 2A 2C CC 12E 12F CC 13E 13F
6 556	M SEA R 1 3A 3C 10C 13C	
		CC 3A 3C
6 559	M AFI R 2A 3B 6G 11B 13J 14D	
6 562	M CWP R 2B 2C 10D 13C	
		CC 2B 2C
6 565	R 2A 4 6G 11B 14E	
6 568	R 2B 2C 3B 6D 7C 10C 13C	
		CC 2B 2C 3B
6 571	M EA R 12C	
6 574	M AFI R 2A 6G 10B 13I 13M 14D	
6 577	M CAR R 2B 2C 3B 4B 6D 13E	
		CC 2B 2C 3B
6 580	R 6G 7E 9C 10A 13C 13J 13K 14 V VEUR	
		CC 13C 13J 13K
6 583	R 2 3 6E	
		CC 2 3
6 586	M CAR R 2C 6G 7 13G 14C	
6 589	R 3	
6 592	M NCA R 12C	
6 595	R 1B 3B 3C 5B 6D	
		CC 3B 3C
6 598	M EUR R 4B 6G 9B 10B 10E 12E 13H	

(voir suite/cont.)

bande/*band*/banda 6 525-6 685 kHz **6.6 MHz**
(suite/cont.)

1	2	3
6 601	R 2	
6 604	R 1D 6G 7C 10A 13N 14B V VNAT	
6 607	R 3A 6A 6B	
6 610	R 1D 6G 14F	
6 613	R 3A 6A 6B 13G	
6 616	R 4A 6G 12G 14E	
6 619	R 3A 6B	
6 622	M NAT R 6G 7F 9B 12C 13D	
6 625	M MID R 3B	
6 628	M NAT R 6G 7E 12C 13D 13M 14	CC 13D 13M
6 631	M MID R 3B 6C	
6 634	R 6G	
6 637	W MONDIALE WORLDWIDE MUNDIAL	C100/I II III
6 640	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
6 643	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
6 646	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
6 649	M SAM R 3A 6G	
6 652	R 6G 7B	
6 655	M NP R 2B 6E	
6 658	R 3C 6A	
6 661	M NP R 2B 6E	
6 664	R 3C 5A	
6 667	R 1E 2B 6F	
6 670	R 3C	
6 673	M AFI CEP R 2A 6G 10F 12D 13D 14B	
6 676	V VSEA	
6 679	V VPAC	
6 682	R 6G	

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bande/*band*/banda 8 815-8 965 kHz **9 MHz**

1	2	3
8 816	R 4A 6G 12C 13J 14A	
8 819	R 2B 2C 9B 10 13C	CC 2B 2C
8 822	R 2A 3B 5A 5C 11B 13G 14	CC 5A 5C C005/2A
8 825	M NAT R 6G 13H 14F	
8 828	R 1D 13N V VPAC	
8 831	M NAT R 6G 13F 14F	
8 834	R 2B 2C 6C 7C 10 13C	CC 2B 2C
8 837	R 3A 3C 4A 9B 10B 13M	CC 3A 3C
8 840	R 1C 6	
8 843	M CEP R 5D 6G 10E 13C 13J 13K 14D	CC 13C 13J 13K
8 846	M CAR R 2 3 7F 9	CC 2 3
8 849	R 13K V VSEA	
8 852	R 3B 3C 9 12E V VAFI	CC 3B 3C
8 855	M SAM R 2 10A 14	
8 858	R 4A 6G 10D 13E 13F 14D	CC 13E 13F
8 861	M SAT R 3A 3B 6E 9B	CC 3A 3B C011/6E
8 864	M NAT R 2B 6B 6F 7E 13F	CC 6B 6F
8 867	M SP R 6G 10C 13D 13M	CC 13D 13M
8 870	R 5 6G 14 V VNAT	C004/6G
8 873	R 4 6G 9C 9D 12E 12F 13I	CC 9C 9D CC 12E 12F
8 876	R 2A 10A 12D 14G	
8 879	M INO NAT R 3B	
8 882	R 2C 6D	
8 885	R 5 6B 11B 13G 14C	
8 888	R 2 6G 7	C009/6G
8 891	M NAT R 6A 14E	

(voir suite/cont.)

bande/*band*/banda 8 815-8 965 kHz **9 MHz**
(suite/cont.)

1	2	3
8 894	M AFI R 3C 12F 14A	
8 897	M EA	
8 900	R 3A 10D 13G 14B	
8 903	M AFI CWP R 10B 13M	
8 906	M NAT R 6A 6E 7B 9B 13H	CC 6A 6E
8 909	R 2A 6E	
8 912	R 5B 6G 11B 13D 14C	C004/6G
8 915	R 3C 5A	
8 918	M CAR MID R 6C	
8 921	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
8 924	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
8 927	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
8 930	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
8 933	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
8 936	W MONDIALE WORLDWIDE MUNDIAL	C100/I II
8 939	R 2A 2C 6F 10B 13C	CC 2A 2C
8 942	M SEA R 3A	
8 945	R 10F 13K 14E V VMID	
8 948	R 6A 12C	
8 951	M MID	
8 954	R 3 10E 12J 14B	
8 957	R 3B 6D 12C 13D 14G V VEUR	
8 960	R 6G 7F	

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bande/*band*/banda **10 005-10 100 kHz** **10 MHz**

1	2	3
10 006	R 6A 10 13G	
10 009	R 2B 2C 7B 9B 13K	CC 2B 2C
10 012	R 5 10 13J	
10 015	R 2 6C 12D	
10 018	M MID R 6G 9 13J 13K	CC 13J 13K C003/6G
10 021	R 1 6B 12C 13G	
10 024	M SAM R 2B 2C 3B 9B	CC 2B 2C 3B
10 027	W MONDIALE WORLDWIDE MUNDIAL	C100/I II
10 030	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
10 033	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
10 036	R 1E 6E 13G 13H	CC 13G 13H
10 039	R 3B 3C 4A 9B 12C	CC 3B 3C
10 042	M EA R 9C 10F 13C 13J 13K	CC 13C 13J 13K
10 045	R 2 3A 11B 13H 14	CC 2 3A
10 048	M NP R 2A 5D 13A 13B	CC 13A 13B
10 051	R 6A 6E 13I V VNAT	CC 6A 6E
10 054	R 2A 2C 6G 12	CC 2A 2C C004/6G
10 057	M CEP R 3A V VAFI	
10 060	R 1D 6F 13K	
10 063	R 4B 6G 12E	C004/6G
10 066	M SEA R 1B 10A 13M	
10 069	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
10 072	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
10 075	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
10 078	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
10 081	M CWP R 4A 6A 7C 13F	C006/6A
10 084	M EUR SP R 6E 13D	
10 087	R 3 14 V VSAM	

(voir suite/cont.)

bande/*band*/banda 10 005-10 100 kHz **10 MHz**
(suite/cont.)

1	2	3
10 090	R 12E 12F V VNCA	CC 12E 12F
10 093	R 5B 6B 11B 13N	
10 096	M NCA SAM R 7D	

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bande/*band*/banda 11 275-11 400 kHz **11.3 MHz**

1	2	3
11 276	R 2A 2C 6G 10E 13J	CC 2A 2C C002/6G
11 279	M NAT R 2B 6F 9C	
11 282	M CEP R 4A 6G 13H	C003/6G
11 285	R 2A 3B 7	CC 2A 3B
11 288	R 5A 6G 11B	
11 291	M SAT R 3B 3C	CC 3B 3C
11 294	R 2A 6G 7C	C002/6G
11 297	R 2 12F	
11 300	M AFI R 6G 13H	C002/6G
11 303	R 3C 13E	
11 306	R 6G 7E 11B	
11 309	M NAT R 3A 6D	
11 312	R 5 9C 9D	CC 9C 9D
11 315	R 6G V VCAR	
11 318	R 3 4A 13D	
11 321	R 6A 13F	
11 324	R 3A 3C 4B 12C	CC 3A 3C
11 327	M SP R 3B 5 13C	
11 330	M AFI NP R 3A 13F	
11 333	R 2B 2C 10	CC 2B 2C

(voir suite/cont.)

bande/*band*/banda 11 275-11 400 kHz **11.3 MHz**

(suite/cont.)

1	2	3
11 336	M NAT R 3	
11 339	R 2B 6B 9 13K	
11 342	W MONDIALE WORLDWIDE MUNDIAL	C100/II III
11 345	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
11 348	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
11 351	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
11 354	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
11 357	R 6A 6E 10A	CC 6A 6E
11 360	M SAM R 2 3 14	CC 2 3
11 363	R 1 6E 10A	
11 366	R 1C 6B 6F 13K	CC 6B 6F
11 369	R 6G 13G	
11 372	R 2C 3B 6D	
11 375	M MID R 10A 13C	
11 378	R 3C 13M V VEUR	
11 381	R 6 12E 12J	CC 12E 12J
11 384	M CWP R 1D 12J	
11 387	M CAR V VSEA	
11 390	R 2 10	
11 393	R 9B 12E V VMID	
11 396	M CAR EA SEA	CC EA SEA

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bande/*band*/banda 13 260-13 360 kHz **13.3 MHz**

1	2	3
13 261	V VAFI	
13 264	R 14 V VEUR	
13 267	R 3 13H	
13 270	R 6G V VNAT	
13 273	M AFI	
13 276	R 6G V VNAT	
13 279	V VNCA VSAM	
13 282	V VPAC	
13 285	R 10 V VSEA	
13 288	M AFI EUR MID	CC AFI EUR MID
13 291	M NAT R 6	
13 294	M AFI	
13 297	M CAR EA SAM	CC CAR SAM
13 300	M CEP CWP NP SP R 4	CC CEP CWP NP SP
13 303	M EA NCA	CC EA NCA
13 306	M INO NAT	
13 309	M EA SEA R 13C 13K	CC EA SEA CC 13C 13K
13 312	M MID R 11B	
13 315	M NCA SAT	
13 318	M SEA R 13	
13 321	R 2 3	CC 2 3
13 324	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
13 327	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
13 330	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
13 333	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
13 336	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
13 339	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
13 342	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
13 345	W MONDIALE WORLDWIDE MUNDIAL	C100/I IV
13 348	W MONDIALE WORLDWIDE MUNDIAL	C100/II V

(voir suite/cont.)

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bande/*band*/banda 13 260-13 360 kHz **13.3 MHz**

(suite/cont.)

1	2	3
13 351	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
13 354	R 5 7	CC 5 7
13 357	M SAT R 2	

MOD 27/207
Aer 2

bande/*band*/banda 17 900-17 970 kHz **18 MHz**

1	2	3
17 901	R 12	
17 904	M CEP CWP NP SP R 4	CC CEP CWP NP SP
17 907	M CAR EA SAM SEA	CC CAR SAM CC EA SEA
17 910	R 10	
17 913	R 6G 13	
17 916	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
17 919	W MONDIALE WORLDWIDE MUNDIAL	C100/II IV
17 922	W MONDIALE WORLDWIDE MUNDIAL	C100/I III
17 925	W MONDIALE WORLDWIDE MUNDIAL	C100/II V
17 928	W MONDIALE WORLDWIDE MUNDIAL	C100/III IV
17 931	W MONDIALE WORLDWIDE MUNDIAL	C100/I V
17 934	W MONDIALE WORLDWIDE MUNDIAL	C100/II III
17 937	W MONDIALE WORLDWIDE MUNDIAL	C100/IV V
17 940	W MONDIALE WORLDWIDE MUNDIAL	C100/II III
17 943	R 6	
17 946	M NAT R 14	
17 949	R 5	
17 952	R 3	
17 955	M SAT R 6B	
17 958	M NCA	
17 961	M AFI EUR INO MID	CC AFI EUR INO MID
17 964	R 2 11B	
17 967	R 5 13A 13B 13E 13F	CC 13A 13B 13E 13F

Explication des symboles et abréviations		Explanation of symbols and abbreviations		Explicación de los símbolos y abreviaturas	
Colonne 2	M = ZLAMP R = ZLARN V = VOLMET W = mondiale	Column 2	M = MWARA R = RDARA V = VOLMET W = worldwide	Columna 2	M = ZRMP R = ZRRN V = VOLMET W = mundial
Colonne 3	CC = voie commune à	Column 3	CC = common channel to	Columna 3	CC = canal común a
C001/...	Dans la zone indiquée après la barre oblique, utilisation diurne	C001/...	Restricted to daytime only, in the area indicated after the slant stroke	C001/...	En la zona indicada después del trazo oblicuo, utilización diurna
C002/6G	Dans la zone 6G, utilisation seulement à l'est de 95°E	C002/6G	In area 6G, operation is restricted to east of 95°E	C002/6G	En la zona 6G, el funcionamiento está limitado al este de 95°E
C003/6G	Dans la zone 6G, utilisation seulement à l'ouest de 95°E	C003/6G	In area 6G, operation is restricted to west of 95°E	C003/6G	En la zona 6G, el funcionamiento está limitado al oeste de 95°E
C004/6G	Utilisation limitée à l'est de 110°E	C004/6G	Use limited to east of 110°E	C004/6G	Uso limitado al este de 110°E
C005/2A	Utilisation limitée au nord de 60°N	C005/2A	Use limited to north of 60°N	C005/2A	Uso limitado al norte de 60°N
C006/6A	Utilisation limitée à l'est de 75°E	C006/6A	Use limited to east of 75°E	C006/6A	Uso limitado al este de 75°E
C007	Pas utilisé	C007	Not used	C007	No ha sido utilizado
C008	Pas utilisé	C008	Not used	C008	No ha sido utilizado
C009/6G	Dans la zone 6G, utilisation seulement à l'est de 110°E et au sud de 25°N	C009/6G	In area 6G, use limited to east of 110°E and south of 25°N	C009/6G	En la zona 6G, el funcionamiento está limitado al este de 110°E y al sur de 25°N
C010/6G	Dans la zone 6G, utilisation seulement à l'est de 118°E et au nord de 40°N	C010/6G	In area 6G, use limited to east of 118°E and north of 40°N	C010/6G	En la zona 6G, el funcionamiento está limitado al este de 118°E y al norte de 40°N
C011/6E	Dans la zone 6E, utilisation limitée au sud de 20°N	C011/6E	In area 6E, use is limited to south of 20°N	C011/6E	En la zona 6E, uso limitado al sur de 20°N
C100/...	La zone d'allotissement pour utilisation mondiale est indiquée à la suite du symbole. En ce qui concerne la procédure pour l'assignation des fréquences, voir le numéro 27/194A	C100/...	Worldwide Allotment Area is indicated after the symbol. For assignment procedure see No. 27/194A	C100/...	Se indica la zona de adjudicación para utilización mundial después del símbolo. En lo que se refiere al procedimiento para la asignación de las frecuencias, véase el número 27/194A

After number 27/207 add the following new article:

ADD

ARTICLE 3

Frequencies for Common Use

ADD 27/208 Aer2 1. The carrier (reference) frequencies 3 023 kHz and 5 680 kHz are intended for common use on a world-wide basis.

ADD 27/209 Aer2 2. The use of these frequencies in any part of the world is authorized:

2.1 aboard aircraft for:

a) communications with approach and aerodrome control;

b) communication with an aeronautical station when other frequencies of the station are either unavailable or unknown;

2.2 at aeronautical stations for aerodrome and approach control under the following conditions:

a) with mean power limited to a value of not more than 20 watts in the antenna circuit;

b) special attention must be given in each case to the type of antenna used in order to avoid harmful interference,

c) the power of aeronautical stations which use these frequencies in accordance with the above conditions may be increased to the extent necessary to meet certain operational requirements subject to coordination between the administrations directly concerned and those whose services may be adversely affected.

ADD 27/210 Aer2 3. Notwithstanding these provisions, the frequency 5 680 kHz may also be used at aeronautical stations for communication with aircraft stations when other frequencies of the aeronautical stations are either unavailable or unknown. However, this use shall be restricted to such areas and conditions that harmful interference cannot be caused to other authorized operations of stations in the aeronautical mobile service.

ADD 27/211 Aer2 4. Additional particulars regarding the use of these channels for the above purposes may be recommended by the meetings of ICAO.

ADD 27/212 Aer2 5. Frequencies 3 023 kHz and 5 680 kHz may also be used by stations of other mobile services participating in coordinated air-surface search and rescue operations, including communications between these stations and participating land stations. Aeronautical stations are authorized to use these frequencies to establish communications with such stations.

ADD 27/213 Aer2 6. These channels may be used for A1 or A3 emissions, in accordance with special arrangements. Such channels shall not be subdivided.

ADD 27/214 Aer2 7. All stations participating directly in coordinated search and rescue operations and using frequencies 3 023 kHz and 5 680 kHz shall transmit solely on the upper sideband except in the cases provided for in No. 27/50.

FINAL PROTOCOL *

At the time of signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the undersigned delegates take note of the following statements made by signatory delegations:

No. 1

For the Democratic People's Republic of Korea:

The delegation of the Democratic People's Republic of Korea to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) cannot agree to the description of the boundary in the sea adjacent to its country which is used in the definition of the NCA-MWARA in Document No. 165 discussed at the Plenary Meeting, since it does not reflect the actual situation.

The delegation of the Democratic People's Republic of Korea therefore considers that the question of the description of the boundary in the sea between the Democratic People's Republic of Korea and the People's Republic of China should be decided between the two countries.

No. 2

For the Yemen Arab Republic:

The delegation of the Yemen Arab Republic to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves its Government's rights in respect of MOD 27/9 of this Frequency Allotment Plan, as communication between aircraft on the ground in the Yemen Arab Republic and any station outside its territory is not allowed without prior permission from the authorities concerned.

No. 3

Republic of the Senegal:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of the Senegal reaffirms its support for international cooperation in the field of telecommunications with due respect for the rights and interests of all Members. However, it reserves for its Government the right to take any action it may consider necessary to safeguard the interests of its telecommunications services should the reservations made or the measures taken by one or more Members jeopardize the efficient operation of these services.

No. 4

For the Republic of Venezuela:

The Administration of Venezuela reserves the right to authorize or prohibit operation of the stations of aircraft having landed at airports on Venezuelan territory, in accordance with Appendix 27 Aer2 to the Radio Regulations, No. 27/9.

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* *Note by the General Secretariat:* The texts of the Final Protocol are shown in the chronological order of their deposit. In the Table of Contents these texts are grouped in the alphabetical order of country names.

No. 5

For the United Republic of Cameroon:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical (R) Service (Geneva, 1978), the delegation of the United Republic of Cameroon declares that the sovereignty of its State takes precedence over all other considerations in the case of application of any of the reservations formulated by other Members of the Union to the Final Acts of the above Conference.

In keeping with this policy, the delegation further reaffirms its position as expressed in the reservation formulated by the delegation at the Plenipotentiary Conference and contained in the Final Protocol to the International Telecommunication Convention (Malaga-Torremolinos, 1973), No. XXXII.

No. 6

For the Argentine Republic:

In signing the Final Acts, the delegation of the Argentine Republic declares that its Government does not accept any obligation in respect of Appendix 27 Aer2 governing the Aeronautical Mobile (R) Service or in respect of the related provisions and application procedures that may affect its telecommunication services.

The Argentine Republic will nevertheless observe the provisions of Appendix 27 Aer2 and the application procedures as far as possible while reserving the right to take any action it may consider necessary to safeguard its aeronautical radiocommunication services.

No. 7

For Malaysia:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of Malaysia reserves the right of its Government to take whatever action it deems necessary to safeguard its interests should Members in any way fail to comply with the Recommendations and/or the Final Acts of the Conference or jeopardize its Aeronautical Mobile (R) Service.

No. 8

For Mexico:

I

In signing the Final Acts, the delegation of Mexico to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), reserves the right of its Government to take any measures it considers necessary in order to protect the interests of its services if the reservations entered or measures taken by another Member or Members are prejudicial to the proper operation of its telecommunication services.

II

The delegation of Mexico to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service reserves its Government's right to apply its own national communications legislation in respect of the amended definition in No. 27/9, in view of the deletion of the words "in flight".

No. 9

For the Gabon Republic:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) the delegation of the Gabon Republic reserves its Government's right to accept or reject the consequences of the reservations entered at this Conference by other Governments when such reservations might jeopardize its telecommunication services.

No. 10

For Libya (Socialist People's Libyan Arab Jamahiriya):

The delegation of the Socialist People's Libyan Arab Jamahiriya reserves the right of its country to prevent, when appropriate, any aircraft from communicating with aeronautical stations while the aircraft is on land (see No. MOD 27/9).

No. 11

For the Republic of the Ivory Coast:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Ivory Coast reserves its Government's right to take any action it may deem necessary to protect its interests:

1. with regard to any attitude adopted by Members of the Union which conflicts with the International Telecommunication Convention and the Radio Regulations;
2. with regard to any reservation entered by Members of the Union which is liable to infringe its rights derived from this Conference.

No. 12

For the Islamic Republic of Mauritania:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Islamic Republic of Mauritania reserves its Government's right to take any measures it sees fit in order to ensure the proper operation of its Aeronautical Mobile (R) Service if any Administration does not abide by the provisions of the Final Acts and the Associated Plan or enters reservations or takes measures liable to infringe upon the sovereign rights of the Islamic Republic of Mauritania.

No. 13

For the Republic of Afghanistan:

I. The delegation of the Republic of Afghanistan to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves the right of its Government to take any measures it may deem necessary to protect its interests if other countries fail to observe the provisions adopted by the Conference.

II. The deletion of the words "in flight" in the modified definition of 27/9 changes the operational use of the frequencies. The delegation of the Republic of Afghanistan reserves the right of its Government to enforce national communication regulations in this regard.

No. 14

For the Republic of Panama:

The delegation of the Republic of Panama to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves its Government's right to apply Appendix 27 Aer2 and the associated provisions regulating the Aeronautical Mobile (R) Service to the extent that the national economy and national sovereignty are not thereby prejudiced.

No. 15

For the Republic of Kenya:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of Kenya reserves the right of its Government to authorize or prohibit the use of operational control communications for aircraft not in flight.

The Republic of Kenya further reaffirms its position in the reservation expressed by its delegation at the Plenipotentiary Conference, contained in Final Protocol No. XXXIII to the International Telecommunication Convention (Malaga-Torremolinos, 1973).

No. 16

For the Federative Republic of Brazil:

The Brazilian Administration reaffirms its support for international cooperation in the field of telecommunications with due respect for the rights and interests of all Members of the International Telecommunication Union. However, it reserves its right, with regard to the definition of "Family of Frequencies" contained in No. MOD 27/9 of Appendix 27 Aer2, to establish within Brazilian territory and through national rules and regulations the conditions for the use of the frequencies of this Frequency Allotment Plan (Rev.1978) by aircraft stations, in order to safeguard the interests of its telecommunications services.

No. 17

For Cuba:

The delegation of Cuba to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) hereby states on behalf of its Government that, in signing the Final Acts, it does not accept any obligation with regard to those provisions and procedures that may affect its telecommunication services, and reserves the right to take any measures it considers necessary.

No. 18

For the Oriental Republic of Uruguay:

The delegation of the Oriental Republic of Uruguay declares on behalf of its Government that signature of the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) does not imply any obligation with respect to Appendix 27 Aer2 (27/9 Rev. and associated provisions) regulating the Aeronautical Mobile (R) Service in any cases which affect the country's economy or sovereignty.

No. 19

For the Republic of India:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of India reserves the right of its Government to take such measures as may be necessary to safeguard its interests should any country make reservations and/or not accept the provisions of the Final Acts including the Associated Plan.

No. 20

For the Kingdom of Saudi Arabia:

The Kingdom of Saudi Arabia reserves the right to authorize or prohibit operation of HF communication stations by aircraft as in No. MOD 27/9 of the Frequency Allotment Plan (1978) while on the ground on Saudi Arabian territory.

No. 21

For the Republic of Bolivia:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) the delegation of the Republic of Bolivia states:

1. that as far as possible it will apply the provisions of Appendix 27 Aer2 to the Radio Regulations;

2. that it reserves the right to take any action it may consider necessary to safeguard the interests of its aeronautical radiocommunication services.

No. 22

For the Republic of Paraguay:

The delegation of the Republic of Paraguay to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service, (Geneva, 1978) states on behalf of its Government that, in signing these Final Acts, it does not accept any obligation in respect of Appendix 27 Aer2 governing the Aeronautical Mobile (R) Service or the related provisions and application procedures that may adversely affect its telecommunication services.

The Republic of Paraguay will nevertheless observe the provisions of Appendix 27 Aer2 and the application procedures as far as possible, while reserving the right to take any action it may consider necessary to safeguard its aeronautical radiocommunication services.

No. 23

For Thailand:

The delegation of Thailand reserves for its Government the right to take such action as it may consider necessary to safeguard its interests in regard to the provisions of the Final Acts of this Conference and in respect of reservations by any country which may jeopardize the telecommunication services of Thailand.

No. 24

For the Republic of the Philippines:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of the Philippines reaffirms its support for international economic cooperation in the field of telecommunications. It likewise reiterates its respect for the rights and interests of Members.

However, should any reservations made or measures taken by other Members jeopardize the interests and efficient operation of its telecommunication services, the Republic of the Philippines reserves the right to take such measures or actions as may be deemed necessary to safeguard and promote such interests.

No. 25

For the Federal Republic of Nigeria:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) the delegation of the Federal Republic of Nigeria hereby declares that its Government reserves the right to take any action which it considers necessary to safeguard its interests at all times should certain Members not comply with the decisions of the Conference or should they fail in any other way to comply with the requirements of the Final Acts of the Conference or its Annexes or the protocols attached thereto, or should reservations by other countries endanger the telecommunications services of the Federal Republic of Nigeria.

No. 26

For the Republic of Guinea:

The delegation of the Republic of Guinea reserves its Government's right to take any action it may consider necessary to safeguard its interests should certain Members not abide by the provisions adopted by the World Administrative Radio Conference on the Aeronautical Mobile (R) Service or should reservations made by other countries jeopardize the proper functioning of its telecommunication services or entail an increase in its contributory share in Union expenses.

No. 27

For the Republic of Singapore:

The delegation of the Republic of Singapore reserves for its Government the right to take such action as it may consider necessary to safeguard its interests in regard to the provisions of the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) and in respect of reservations by any country which may jeopardize the telecommunication services of the Republic of Singapore.

No. 28

For the Republic of Upper Volta:

The delegation of the Republic of Upper Volta to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves its Government's right to take any action it may consider necessary to safeguard its interests should the normal operation of its telecommunication services be affected by the behaviour or reservations of certain Administrations in applying the Final Acts of the present Conference.

No. 29

Republic of Liberia:

In signing the Final Acts of the World Administrative Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of Liberia reserves the right of its Government to take any action it may consider necessary to safeguard the interests of its telecommunications services, should the reservations made or the measures taken by another Member or Members jeopardize the efficient operation of these services.

No. 30

For the Republic of Indonesia:

The delegation of the Republic of Indonesia to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves the right of its Government to take:

1. any action it deems necessary to safeguard its interests should Members in any way fail to comply with the requirements in the Final Acts of the Conference or should reservations by other Members jeopardize its Aeronautical Mobile Telecommunication Services;
2. further action in accordance with the Constitution and Laws of the Republic of Indonesia.

No. 31

For the Republic of Colombia:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of Colombia states that, with a view to safeguarding its country's telecommunication services, the sovereignty of Colombia may not be infringed in any circumstances by any of the provisions adopted by the Conference or by any of the reservations entered by other Members of the Union.

Moreover, it reserves the right to take any action it may consider necessary to safeguard and enforce its sovereign rights in accordance with the constitution and law of the country.

It also reserves its Government's right to authorize or prohibit the operation of stations of aircraft landed at the airports of the Republic of Colombia in accordance with Appendix 27 Aer2 (No. MOD 27/9) to the Radio Regulations.

No. 32

For Spain:

I

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service the delegation of Spain reserves its Government's right to take any action it may consider necessary to safeguard its telecommunication services should they be affected by the reservations entered by other Members.

II

In signing the Final Acts of the present Conference, the delegation of Spain reserves its Government's rights with regard to the application of No. MOD 27/9 of Appendix 27 Aer2.

No. 33

For the Democratic Republic of Sao Tome and Principe:

The delegation of the Democratic Republic of Sao Tome and Principe, in signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), reserves its Government's right to accept or reject the consequences of the reservations made at this Conference by other Governments where such reservations might jeopardize its telecommunications services. In any case, it reaffirms its respect for the rights and interest of the Members of the Union.

No. 34

For Norway:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the Norwegian delegation states that the delineation of MWARA areas in no way affects Norway's exclusive right to provide Air Traffic Control and Flight Information Service and to establish associated facilities in the regions of the Kingdom of Norway falling within the NCA-MWARA.

No. 35

For the Islamic Republic of Pakistan:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Islamic Republic of Pakistan reserves the rights of its Government to permit an aircraft station on the ground in its territory to communicate with an aeronautical station located outside the territory of the Islamic Republic of Pakistan on the frequencies defined in MOD 27/9 of Appendix 27 Aer2 to the Radio Regulations.

No. 36

For the United Repubic of Tanzania:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the United Republic of Tanzania reserves the right of its Government to take any action it deems necessary to safeguard its interests in the event that Members fail in any way to comply with these provisions, or should these provisions and procedures jeopardize its telecommunication services.

No. 37

For the Republic of Guatemala:

The delegation of the Republic of Guatemala to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves its Government's right with regard to No. MOD 27/9 of Appendix 27 Aer2 to the Radio Regulations, and concerning the reservations, provisions and procedures whose application may affect its radiocommunicaton services.

Nevertheless, in the interest of international cooperation, it reaffirms its intention to observe the provisions contained in the said Regulations so far as possible.

No. 38

For the Algerian Democratic and Popular Republic, the Kingdom of Saudi Arabia, the State of Bahrain, the People's Republic of Bangladesh, the State of Kuwait, Libya (Socialist People's Libyan Arab Jamahiriya), the Kingdom of Morocco, the Islamic Republic of Mauritania, the Islamic Republic of Pakistan, the State of Qatar, the Syrian Arab Republic, the Yemen Arab Republic, and the People's Democratic Republic of Yemen:

The delegations of the above-mentioned countries declare that the signature and possible subsequent ratification by their respective Governments of the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) do not in any way imply the recognition of Israel.

No. 39

For Chile:

In signing the Final Acts, the delegation of the Republic of Chile declares that its Government accepts no obligation with respect to Appendix 27 Aer2 governing the Aeronautical Mobile (R) Service or the associated provisions or application procedures which may affect its telecommunication services.

Nevertheless, the Republic of Chile will observe the provisions of Appendix 27 Aer2 and the application procedures so far as possible, while reserving the right to adopt such measures as it sees fit to safeguard its aeronautical radiocommunications.

No. 40

For Ecuador:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Republic of Ecuador reserves its Government's right to accept or refuse any obligation arising from those provisions and procedures of the Final Acts of the said Conference or from the reservations entered by any other country that may prejudice the proper operation of its telecommunication services, and to take any action that may be necessary to safeguard the country's interests with regard to the Aeronautical Mobile Service.

No. 41

For the Algerian Democratic and Popular Republic:

The delegation of the Algerian Democratic and Popular Republic to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978) reserves its Government's right to take any action it may consider necessary to safeguard its interests with respect to any provision of the Final Acts of the said Conference that might prejudice the proper operation of its telecommunication services.

No. 42

For the People's Republic of Bangladesh:

In signing the Final Acts, the delegation of the People's Republic of Bangladesh reserves the right of its Government to take any action it may deem necessary to safeguard its interest while adhering to the provisions of MOD 27/9 of Appendix 27 Aer2 to the Radio Regulations.

The delegation further reaffirms the position expressed in Final Protocol No. XVII of the International Telecommunication Convention (Malaga-Torremolinos, 1973).

No. 43

For the Syrian Arab Republic:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service, (Geneva, 1978), the delegation of the Syrian Arab Republic, while reaffirming its support for international cooperation in the field of telecommunications, reserves its Government's right to take any action it may consider necessary to authorize or prohibit the operation of aircraft stations on the ground in the Syrian Arab Republic in order to safeguard the interests of its telecommunication services.

No. 44

For Ethiopia:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service, (Geneva, 1978) the delegation of Ethiopia reserves the right of its Government to take any action needed to safeguard its interests if any country fails to abide by the provisions of the Final Acts and the associated Plan.

No. 45

For the Federal Republic of Germany, Denmark, Greece, Norway, Sweden and the Confederation of Switzerland:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegations mentioned above wish to state the following:

Commencing in 1976, very powerful pulse transmissions from HF stations operating within the territory of the U.S.S.R. have been causing continued harmful interference over large areas on frequencies in the HF bands, including those allocated to the Aeronautical Mobile (R) Service, and will, if not terminated, be liable to cause harmful interference on frequencies in the new Plan.

The above delegations refer to Article 35 in the Convention and to Resolution No. Aer2 of the Radio Regulations, and express their great concern about this prolonged violation of the said provisions.

Their Administrations reserve the right to take appropriate measures to protect the Aeronautical Mobile (R) Service, and other radio services, if this harmful interference continues.

No. 46

For the Republic of Korea:

The delegation of the Republic of Korea reserves for its Government the right to take such action as it may deem necessary to safeguard its interests in relation to the provisions of the Final Acts of this Conference and with regard to reservations by any country which may jeopardize the telecommunication services of the Republic of Korea.

No. 47

For the Democratic People's Republic of Korea:

The delegation of the Democratic People's Republic of Korea to the World Administrative Radio Conference on the Aeronautical Mobile (R) Service cannot agree to the description of the boundary in the Western Sea adjacent to its country in Sub-RDARA 6B, 6F and 6G discussed at the Plenary Meeting and because it does not reflect our position.

The delegation of the Democratic People's Republic of Korea therefore considers that the description of the boundary in the sea between the Democratic People's Republic of Korea and the People's Republic of China should be decided between the two countries later.

No. 48

For the People's Republic of China:

I

Appendix 27 Aer2 to the Radio Regulations fails to explicitly include in RDARA Sub-Area 6G the region defined by coordinates 32°30′N 124°E, 32°30′N 126°50′E, 26°N 125°E, 25°N 123°E, which encompasses China's territory Diaoyu Dao and other islands. The Chinese Delegation cannot agree to this omission which affects China's sovereignty and interests and the flight operations of its domestic air services in the region. The Chinese authorities concerned will continue to take measures to ensure the smooth operation of their flight services in the above-mentioned region.

II

In the maps of the MWARA, RDARA and VOLMET Areas attached to Appendix 27 Aer2 to the Radio Regulations, the delineation of the boundary line between the People's Republic of China and India does not conform to China's national boundary; the Chinese Delegation deems that it should be corrected to conform to China's national boundary.

No. 49

For the Union of Soviet Socialist Republics:

In connection with the statement made by the delegates of the Federal Republic of Germany, Denmark, Greece, Norway, Sweden and Switzerland and contained in Final Protocol No. 45, the delegation of the U.S.S.R. wishes to make the following statement:

In the Soviet Union the research on radio-wave propagation is being conducted by using the radio installations in the HF range and it might perhaps (according to the statements of Administrations of certain States) cause some short-term interference to individual services. Similar signals have been recorded in the Soviet Union by the receiving apparatus and monitoring service from the operation of installations of other countries.

With a view to reducing possible interference with the Aeronautical and Maritime Mobile Services operating in the HF range from the above-mentioned research operation conducted in the Soviet Union, a number of technical and organizational measures have been taken.

At present radio monitoring services confirm the efficiency of the measures taken.

In carrying out these studies, the Administration of the Soviet Union takes due account of the provisions of the International Telecommunication Convention and the Radio Regulations.

No. 50

For the Republic of India:

The Indian delegation has noted the following statement incorporated on the maps of MWARA, RDARA and VOLMET Areas attached to Appendix 27 Aer2 to the Radio Regulations: "The mention of the name of a country or of a geographical area on this map, as well as the tracing of borders, do not imply, on the part of the ITU, any position with respect to the political status of such a country or geographical area, or official recognition of these borders". However, in view of paragraph 2 of the Final Protocol No. 48 of the People's Republic of China, the Indian delegation would like to point out that the Republic of India does not accept the claims of the People's Republic of China in regard to the boundary line between China and India and there is no need for any correction to the maps as mentioned in the said Final Protocol of the People's Republic of China.

No. 51

For Japan:

Referring to 27/76 of Appendix 27 Aer2 to the ITU Radio Regulations and to paragraph 1 of the reservation made by the Chinese delegation (Final Protocol No. 48) which was distributed on 2 March 1978, the Japanese delegation is, under instructions from its Government, obliged to state as follows:

The Senkaku Islands, referred to as the Diaoyu Dao and other islands in the reservation made by the Chinese delegation in the above-mentioned Protocol, are an integral part of Japanese territory and therefore the Chinese allegation that these islands are Chinese territory is totally groundless.

No. 52

For the Republic of Korea:

In connection with paragraph 1 of Final Protocol No. 48, the delegation of the Republic of Korea states its position as follows:

1. the Republic of Korea delegation does not associate the RDARA boundaries with territorial boundaries;
2. the Republic of Korea delegation reserves the right of its Government to safeguard its national interests as well as aeronautical and flight operations in the area.

No. 53

For the Yemen Arab Republic:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the Yemen Arab Republic reserves the right of its Government to:

1. consider the text of No. ADD 27/8A as applying to communications between aeronautical stations and aircraft in flight;
2. to prohibit communication between any aircraft on the ground in the Yemen Arab Republic and any station outside its territory.

No. 54

For the People's Democratic Republic of Yemen:

In signing the Final Acts of the World Administrative Radio Conference on the Aeronautical Mobile (R) Service (Geneva, 1978), the delegation of the People's Democratic Republic of Yemen reserves the right of its Government to:

1. consider the texts of ADD 27/8A and MOD 27/9 of Appendix 27 Aer2 as applying to communications between aircraft stations in flight and appropriate aeronautical stations only;
2. authorize or forbid aircraft stations on the ground to communicate with aeronautical stations or any other telecommunication station located outside the territory of the People's Democratic Republic of Yemen.

No. 55

For the Kindom of Saudi Arabia:

The delegation of the Kingdom of Saudi Arabia reserves the right of its Government to authorize or prohibit the operation of HF communication stations by aircraft as in No. ADD 27/8A (and associated Note) of Appendix 27 Aer2 while on the ground in Saudi Arabian territory.

No. 56

For Iran:

With respect to 27/9 of Appendix 27 Aer2 the Delegation of Iran, while reaffirming its permanent support of international cooperation in the field of telecommunications, reserves the right of its Government to take any necessary action to authorize or prohibit operations of aircraft stations landed at airports anywhere within the territory of Iran to safeguard the interests of its services concerned.

(The signatures follow)

(The signatures following the Final Protocol are the same as those which follow the revision of the Radio Regulations on pages 2 to 5).

RESOLUTION No. Aer2 – 1

Relating to the Use of Frequencies 3 023 kHz and 5 680 kHz Common to the Aeronautical Mobile (R) and (OR) Services

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

having noted

that some anomalies appeared to exist in the conditions prescribed in Appendix 26 to the Radio Regulations, Geneva, 1959, for the use of the frequencies [3 023.5] kHz and 5 680 kHz, as contained in Article 2 of the Frequency Allotment Plan, column 3, clauses 2 *a)* and 2 *b)* and having taken steps to remove these anomalies;

considering

a) that the coordination of search and rescue operations at the scene of a disaster would be improved if the use of the frequencies 3 023 (previously 3 023.5) kHz and 5 680 kHz, in such operations, were extended to include communications between mobile stations and participating land stations;

b) that it would be in the general interests of the aeronautical mobile service if the same provisions relating to the use of the frequencies 3 023 (previously 3 023.5) kHz and 5 680 kHz were applied to operations both in the aeronautical mobile (R) service and the aeronautical mobile (OR) service;

resolves

to invite administrations to apply in the aeronautical mobile (OR) service, as from the date of coming into force of the Final Acts of the Conference, the provisions governing the use of the frequencies 3 023 kHz and 5 680 kHz specified in Appendix 27 Aer2 (Part II, Section II, Article 3).

RESOLUTION No. Aer2 – 2

Relating to the Unauthorized Use of Frequencies in the Bands Allocated to the Aeronautical Mobile (R) Service

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978, *considering*

a) that monitoring observations of the use of the frequencies in the bands between 2 850 and 17 970 kHz allocated exclusively to the aeronautical mobile (R) service show that a number of frequencies in these bands are still being used by stations of services other than the aeronautical mobile (R) service, notably by high-powered broadcasting stations, some of which are operating in contravention of No. 422 of the Radio Regulations;

b) that these stations are causing harmful interference to the aeronautical mobile (R) service and that a considerable number of emissions, the sources of which could not be positively identified, have been observed in these bands;

c) that radio is the sole means of communication available to the aeronautical mobile (R) service and that this service is a safety service;

considering, in particular

d) that it is of paramount importance that channels directly concerned with the safe and regular conduct of aircraft operations be kept free from harmful interference, since they are essential for the protection of the safety of life and property;

resolves to urge administrations

1. to ensure that stations of services other than the aeronautical mobile (R) service refrain from using frequencies allocated to this service other than under the conditions specified in Nos. 115 and 415 of the Radio Regulations;

2. *a)* to make every effort to identify and locate the source of any unauthorized emission capable of causing harmful interference to the aeronautical mobile (R) service, thereby endangering this safety service;

   b) and to communicate their findings to the IFRB;

3. to participate in the monitoring programmes that the IFRB may organize pursuant to this Resolution;

4. to request their governments to enact such legislation as is necessary to prevent stations located on board aircraft operating in contravention of No. 422 of the Radio Regulations;

requests the IFRB

1. to continue to organize monitoring programmes in the bands exclusively allocated to the aeronautical mobile (R) service with a view to eliminating the emissions of out-of band stations which cause, or are likely to cause, harmful interference to the aeronautical mobile (R) service;

2. to take steps to eliminate the emissions of out-of-band stations which cause, or are likely to cause, harmful interference to the aeronautical mobile (R) service;

3. to seek, as appropriate, the co-operation of administrations in identifying the sources of out-of-band emissions by all available means, and in securing the cessation of these emissions.

RESOLUTION No. Aer2 – 3

Relating to the Implementation of the New Arrangement Applicable to Bands Allocated Exclusively to the Aeronautical Mobile (R) Service between 2 850 and 17 970 kHz

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the use of each of the frequency bands between 2 850 and 17 970 kHz allocated exclusively to the aeronautical mobile (R) service by the Administrative Radio Conference, Geneva, 1959, was modified by the Extraordinary Administrative Radio Conference, Geneva, 1966;

b) that the 1966 Conference resolved that administrations shall effect, as soon as possible, a progressive conversion of their radiocommunications in the aeronautical mobile (R) service from double-sideband to single-sideband operation, in consequence of which the use of the above bands has been further modified by the present Conference to provide for SSB techniques;

c) that a considerable number of frequency assignments of both aircraft and aeronautical stations will be transferred from existing frequencies to the new frequencies and channels designated by the present Conference;

d) that changes in frequency assignments should be made as soon as possible so that the advantages of the new channels designated by the present Conference may be realized at the earliest opportunity;

e) that the transfer of assignments should be made with the least possible disruption of the service rendered by each station;

f) that the transfer of assignments should be made so as to avoid harmful interference between the stations involved during the implementation period;

g) that the Final Acts of the present Conference will enter into force on 1 September 1979;

h) that the new Frequency Allotment Plan contained in Appendix 27 Aer2 will enter into force on 1 February 1983;

recognizing

a) that the aeronautical mobile (R) service is primarily a safety service;

b) that some frequencies have been allotted for world-wide use;

c) that the implementation of the decisions made by the present Conference relating to the new arrangement of the frequency bands allocated to the aeronautical mobile (R) service between 2 850 and 17 970 kHz should follow an orderly procedure for the transfer of existing services from the old to the new assignments;

resolves

1. that between the entry into force of the Final Acts of this Conference on 1 September 1979 and the entry into force of the new Frequency Allotment Plan contained in Appendix 27 Aer2 on 1 February 1983, channel utilization for any new SSB operation shall be in accordance with the following provisions:

1.1 the carrier (reference) frequency of the single-sideband channel in the upper half of the previous double-sideband channel shall be the same as the carrier (reference) frequency of that channel;

1.2 the carrier (reference) frequency of the single-sideband channel in the lower half of the previous double-sideband channel shall be 3 kHz lower than the carrier (reference) frequency of that channel;

1.3 that, prior to 1 February 1983, aeronautical and aircraft stations fitted with single-sideband equipment may employ either half of the previous double-sideband channel (the single-sideband carrier (reference) frequency being that in 1.1 and 1.2 above);

1.4 channels in the new Plan may be used by any administration provided that no harmful interference occurs to users of channels in the present Plan. For the operational use of the channels concerned administrations should take into account the provisions of No. **27/20** of Appendix 27 Aer2 to the Radio Regulations;

2. that on 1 February 1983, the frequencies appearing in Appendix 27 to the Radio Regulations, shall be replaced by the frequencies appearing in Part II, Section II, Article 2, Appendix 27 Aer2;

3. that administrations take all the necessary measures with a view to converting to single-sideband operation as soon as possible by not permitting the installation of new double-sideband equipment as from 1 April 1981. Aircraft and aeronautical stations shall be capable of single-sideband operation at the earliest possible date; furthermore, they shall discontinue double-sideband emissions as early as possible, and, in any event, not later than 1 February 1983;

4. that, until 1 February 1983, aeronautical and aircraft stations equipped for single-sideband operation shall also be equipped to transmit class A3H emissions where required to be compatible with reception by double-sideband equipment;

5. that, unless otherwise specified in the Final Acts of the present Conference, the use of classes of emissions A2H, A3J, A7J and A9J only shall be authorized as of 1 February 1983. Double-sideband operations may, however, be continued for domestic use until 1 February 1987, provided this operation is conducted in accordance with Nos. **667** and **674** of the Radio Regulations and that no harmful interference is caused to the international aeronautical mobile (R) service operating in the single-sideband mode. Administrations requiring such an extension of the period of full implementation of single-sideband operations are, nevertheless, urged to cease double-sideband operations as soon as possible.

RESOLUTION No. Aer2 — 4

Relating to the Treatment of Notices Concerning Frequency Assignments to Aeronautical Stations in the Bands Allocated Exclusively to the Aeronautical Mobile (R) Service between 2 850 and 17 970 kHz

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the Final Acts of the present Conference will enter into force on 1 September 1979;

b) that the new Frequency Allotment Plan contained in Appendix 27 Aer2 will enter into force at 00.01 hours GMT on 1 February 1983;

c) that some administrations may wish to implement certain provisions of the new Frequency Allotment Plan in advance of the latter date when this may be done without causing harmful interference to stations operating in accordance with the present Frequency Allotment Plan;

d) that it will therefore be necessary to provide an interim procedure to facilitate transition from the existing Frequency Allotment Plan to the new Frequency Allotment Plan;

resolves

1. that during the interim period between the date of entry into force of the Final Acts and the date of entry into force of the new Frequency Allotment Plan:

1.1 the provisions of Nos. 553 to 558 of the Radio Regulations shall continue to be applied in the examination of notices concerning frequency assignments to aeronautical stations in the aeronautical mobile (R) service in the allotments of the existing Plan;

1.2 all such assignments shall be recorded in the Master International Frequency Register in accordance with the findings reached by the IFRB;

1.3 frequency assignments in a channel of the new Plan shall be examined by the IFRB in order to determine whether the protection specified in Appendix 27 Aer2 (Part I, Section IIA, paragraph 5) is afforded to the allotments in the existing Plan. In so doing, the Board shall assume that the frequency will be used in accordance with the sharing conditions between areas specified in Appendix 27 Aer2, Part I, Section IIB, paragraph 4;

1.4 all such assignments mentioned in paragraph 1.3 having received a favourable finding shall be recorded in the Master International Frequency Register;

1.5 the date to be entered in Column 2a or 2b of the Master International Frequency Register shall be as follows:

a) if the finding is favourable with respect to Nos. 554 to 557, the date of 29 April 1966 shall be entered in Column 2a;

b) if the finding is favourable with respect to No. 558, the date of 29 April 1966 shall be entered in Column 2b;

c) for all other assignments (including those which may be in conformity with the new Frequency Allotment Plan but not in conformity with the present Frequency Allotment Plan) the date of receipt of the notice by the IFRB shall be entered in Column 2b;

1.6 any assignment which is in accordance with the new Frequency Allotment Plan shall be so indicated by the insertion by the IFRB of an appropriate symbol in the Remarks Column of the Master International Frequency Register;

2. that on the date of the entry into force of the new Frequency Allotment Plan, the IFRB shall examine those frequency assignments to aeronautical stations in the aeronautical mobile (R) service in the bands allocated exclusively to that service between 2 850 and 17 970 kHz which are contained in the Master International Frequency Register from the point of view of their conformity with the new Frequency Allotment Plan, following the relevant parts of the procedure described in Nos. 553 to 558 of the Radio Regulations, and shall record against them in the Master International Frequency Register a date in Column 2a or 2b as follows:

2.1 assignments with double-sideband emissions (A3) already appearing in the Master Register on the date of the entry into force of the new Frequency Allotment Plan shall retain the date recorded in Column 2a or 2b, as appropriate, until 1 February 1983. A date in Column 2a for a frequency assignment using double-sideband emissions (A3) shall be transferred to Column 2b on 2 February 1983. On 1 January 1987 the IFRB shall review the entries and, in consultation with the administrations concerned, cancel those entries which are no longer in use, retaining the others for information only, without a date in Column 2b;

2.2 assignments found favourable with respect to Nos. 553A to 557 shall have the date of 5 March 1978 entered in Column 2a;

2.3 assignments found favourable with respect to Nos. 553A and 558 shall have the date of 5 March 1978 entered in Column 2b;

2.4 all other assignments shall have the date of 6 March 1978 entered in Column 2b;

3. that, on the date of the entry into force of the new Frequency Allotment Plan, the allotments contained therein shall replace in the Master International Frequency Register the allotments appearing in the existing Frequency Allotment Plan;

invites

administrations to notify to the IFRB as soon as possible the cancellation of frequency assignments released as a consequence of bringing into use the allotments in the new Plan.

RESOLUTION No. Aer2 – 5

Relating to the Implementation of the Frequency Allotment Plan in the Bands Allocated Exclusively to the Aeronautical Mobile (R) Service Between 2 850 and 17 970 kHz

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the bands allocated exclusively to the aeronautical mobile (R) service between 2 850 and 17 970 kHz by the Administrative Radio Conference, Geneva, 1959, were modified by the Extraordinary Administrative Radio Conference, Geneva, 1966;

b) that the Extraordinary Administrative Radio Conference, Geneva, 1966, established procedures to be followed by administrations relating to the implementation of the modifications;

c) that the necessary arrangements were made for the IFRB to carry out these procedures;

recognizing

a) that the aeronautical mobile (R) service is primarily a safety service;

b) that the present Conference has further modified the said bands to provide for single-sideband techniques;

c) that there is a need for all administrations to implement the modifications made by the present Conference with a view to avoiding any harmful interference to the services rendered by stations operating in accordance with the Radio Regulations;

resolves

1. that, not later than ninety days before the entry into force of the new Plan, administrations shall notify the IFRB of the modifications necessary to bring the assignments existing in the Master Register into conformity with this Plan;

2. that the assignments existing in the Master Register on 1 February 1983 which are not in conformity with the decisions of the present Conference on that date shall be treated as follows:

2.1 within thirty days from 1 February 1983, the IFRB will send relevant extracts from the Master Register to the administrations concerned advising them that, in accordance with the terms of the present Resolution, the assignments in question are to be transferred to the appropriate frequencies within a period of one hundred and eighty days after the dispatch of the extracts;

2.2 if an administration fails to notify the IFRB of the transfer within the prescribed period, the original entry will be retained in the Master Register without a date in Column 2 and with a suitable remark in the Remarks Column. The administrations will be advised of this action;

3. that, if an administration so desires, the IFRB will provide it with all necessary assistance. In so doing, the IFRB will apply the provisions of Nos. **629** to **633** of the Radio Regulations.

RESOLUTION No. Aer2 – 6

Relating to the Use of Frequency Bands, higher than the HF Bands, in the Aeronautical Mobile (R) Service and the Aeronautical Mobile-Satellite (R) Service for Communication and for Meteorological Broadcasts

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that from an aeronautical viewpoint, higher frequency bands can provide a more reliable and more interference-free communication system than HF;

b) that from a technical and operational viewpoint, the use of VHF by aviation has progressed significantly;

c) that the future possibility of communications utilizing satellite technology is now recognized;

d) that, owing to the ever increasing development of aeronautical telecommunications in all areas of the world, there is an increasing demand for frequencies for communication with and for meteorological broadcasts to aircraft in flight;

resolves

that administrations, taking into account the relevant economic and technical factors, consider to the maximum extent possible meeting their requirements for communication and for meteorological broadcasts by frequencies in frequency bands, higher than the HF bands, which are allocated to the aeronautical mobile (R) service and the aeronautical mobile-satellite (R) service.

RESOLUTION No. Aer2 – 7

Relating to the Use of Frequencies of the Aeronautical Mobile (R) Service

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the Frequency Allotment Plan adopted in 1966 and developed for the use of high frequency channels for the aeronautical mobile (R) service (Appendix 27 to the Radio Regulations) has been substantially revised by this Conference;

b) that air operations are subject to continuous changes;

c) that these changes require attention by the administrations concerned; but

d) that, in seeking to satisfy new communication requirements, no decision should be taken that will prevent or handicap the coordinated utilization of those high frequency aeronautical mobile (R) band allotments as prescribed in the Plan;

e) that the families of frequencies allotted to the Major World Air Route Areas (MWARAs), Regional and Domestic Air Route Areas (RDARAs) and Sub-Areas and VOLMET areas have been chosen considering propagation conditions which allow for the selection of the most suitable frequencies for the distances involved;

f) that specific steps should be taken to ensure that the correct order of frequency is used;

g) that it is essential to distribute the communication traffic load as uniformly as possible over the frequencies available;

h) that frequencies have been allotted for world-wide use;

resolves

that administrations, individually or in collaboration, take the necessary steps:

1. to make as great a use as possible of higher frequencies in order to lessen the load on the high frequency aeronautical mobile (R) bands;

2. to make as great a use as possible of antennae of appropriate directivity and efficiency in order to minimize the possibilities of mutual interference within an area or between areas;

3. to coordinate the use of families of frequencies necessary for a given route segment in accordance with the technical principles in Appendix 27 Aer2 and in the light of the propagation data available, to ensure that the most appropriate frequencies are used with an aircraft at a given distance from the aeronautical station providing service over the route segment concerned;

4. to improve operating techniques and procedures and to use equipment which will make it possible to attain the highest possible efficiency in handling air-ground high frequency communications;

5. to collect precise data on the operation of their high frequency communication systems, particularly data having a bearing on technical and operating standards, so as to facilitate re-examination of the Plan;

6. to establish, through regional arrangements, the best method of providing the communications required for any new long-distance international or regional air operation which is not or cannot be accommodated within the system of MWARA and RDARA, in such a manner as not to cause harmful interference to the utilization of frequencies as prescribed in the Plan.

RESOLUTION No. Aer2 – 8

Relating to the Abrogation of various Resolutions and a Recommendation of the Extraordinary Administrative Radio Conference, Geneva, 1966, and a Resolution of the Administrative Radio Conference, Geneva, 1959

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the following Resolutions and Recommendation of the Extraordinary Administrative Radio Conference, Geneva, 1966, were superseded as indicated:

Resolution No. Aer 1 relating to the use of frequencies 3 023.5 and 5 680 kHz common to the aeronautical mobile (R) and (OR) services, by Resolution No. Aer2 – 1.

Resolution No. Aer 2 relating to the use of frequencies in the HF bands allocated exclusively to the aeronautical mobile (R) service, by Resolution No. Aer2 – 2;

Resolution No. Aer 4 relating to the use of VHF for communication in the aeronautical mobile (R) service, and Resolution No. Aer 5 relating to the use of VHF for meteorological broadcasts in the aeronautical mobile (R) service, by Resolution No. Aer2 – 6;

Resolution No. Aer 6 relating to the treatment of notices concerning frequency assignments to aeronautical stations in the aeronautical mobile (R) service in the bands allocated exclusively to that service between 2 850 and 17 970 kHz, by Resolution No. Aer2 – 4;

Recommendation No. Aer 1 relating to the development of techniques which would help to reduce congestion in the high frequency bands allocated to the aeronautical mobile (R) service, by Recommendation No. Aer2 – 1;

b) that Resolution No. 14 of the Administrative Radio Conference, Geneva, 1959, relating to the use of frequencies of the aeronautical mobile (R) service, was replaced by Resolution No. Aer2 – 7;

c) that Resolution No. Aer 3 of the Extraordinary Administrative Radio Conference, Geneva, 1966, relating to the introduction of single sideband techniques in the HF bands allocated to the aeronautical mobile (R) service is now obsolete;

resolves

that all the said Resolutions and the Recommendation are abrogated.

RECOMMENDATION No. Aer2 – 1

Relating to the Development of Techniques which would help to reduce Congestion in the High Frequency Bands Allocated to the Aeronautical Mobile (R) Service

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that several administrations are actively engaged in the development of communication techniques the wider use of which, in the aeronautical mobile (R) service, would help to reduce congestion in the high frequency bands allocated to that service; such developments include the use of higher frequencies with remotely controlled stations, directional antennae, space radiocommunication techniques and automatic data transmission;

b) that knowledge of these developments would be useful to other administrations in considering the application of these techniques to their aeronautical mobile (R) communication services;

c) that the International Civil Aviation Organization (ICAO) is actively engaged in coordinating the operational development of such techniques;

recommends

administrations engaged in the development of techniques which would help to reduce congestion in the HF bands to inform the IFRB periodically of the progress achieved;

instructs

the IFRB to circulate periodically the information so obtained to administrations and to the ICAO.

RECOMMENDATION No. Aer2 – 2

Relating to the Efficient Use of Aeronautical Mobile (R) World-Wide Frequencies

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

that the Conference has allotted a limited number of world-wide frequencies for exercising control over regularity of flight and for safety of aircraft;

recommends to administrations

1. that the number of HF aeronautical stations on the world-wide channels should be kept to a minimum consistent with the economic and efficient use of frequencies;

2. that, if possible and practicable, one such station should serve aircraft operating agencies in adjacent countries and there should not normally be more than one station per country.

RECOMMENDATION No. Aer2 – 3

Relating to Cooperation in the Efficient Use of World-Wide Frequencies in the Aeronautical Mobile (R) Service

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) the need to make the most efficient use of world-wide frequencies in the aeronautical mobile (R) service;

b) that a plan has been adopted for the allotment by areas of world-wide frequencies in the aeronautical mobile (R) service;

c) the desirability of coordination between administrations within the areas to which the Allotment Plan applies;

d) the right of an administration to select and notify to the IFRB for recording in the Master International Frequency Register any frequency assignment in a channel allotted to the area in which its country is located;

e) the role played by the IFRB in regulatory procedures under Article 9 of the Radio Regulations;

f) the role played by ICAO in the field of international aeronautical operations;

invites

1. administrations within a world-wide allotment area, as they consider it appropriate, and the International Civil Aviation Organization, to seek the advice of the IFRB in determining the best choice of frequencies from a technical viewpoint in order to make the most efficient use of aeronautical mobile (R) world-wide frequencies;

2. administrations within a world-wide allotment area, as they consider it appropriate, to coordinate mutually the use of these frequencies from the viewpoint of aeronautical operations and, in this connection, to bear in mind the benefit that could be gained by obtaining the advice of ICAO in this process;

3. the IFRB to assist any administration or group of administrations in a world-wide allotment area wishing to coordinate their requirements for world-wide frequencies and to continue its cooperation with ICAO for this purpose;

requests

the Secretary-General to bring this Recommendation to the attention of the International Civil Aviation Organization.

RECOMMENDATION No. Aer2 – 4

Relating to the Transition from the Present to the New Frequency Allotment Plan in the Bands Allocated Exclusively to the Aeronautical Mobile (R) Service between 2 850 and 17 970 kHz

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that the Final Acts of this Conference will enter into force on 1 September 1979;

b) that the new Frequency Allotment Plan contained in Appendix 27 Aer2 will enter into force at 00.01 hours GMT on 1 February 1983;

c) that some administrations may wish to implement certain provisions of the new Frequency Allotment Plan in advance of the latter date when this may be done without causing harmful interference to stations working in accordance with the present Frequency Allotment Plan;

d) that, following the Extraordinary Administrative Radio Conference, Geneva, 1966, the International Civil Aviation Organization (ICAO), under the provisions of No. 27/20 of Appendix 27 and within the spirit and framework of Resolution No. Aer 6 of that Conference, developed a transition programme for the aeronautical mobile (R) service to convert the Frequency Allotment Plan in Appendix 26 to that in Appendix 27;

e) that the ICAO transition programme was subsequently provided to the International Frequency Registration Board for distribution to ITU Member administrations;

f) that it will be useful again to adopt a programme to facilitate transition from the existing to the new Frequency Allotment Plan;

recommends

1. that the International Civil Aviation Organization be invited to develop a transition programme, within the framework of Appendix 27 Aer2, for the operational use by aeronautical stations of the frequencies contained in the Frequency Allotment Plan except for those RDARAs which are not involved in international operations;

2. that the International Civil Aviation Organization be invited to forward the transition programme for the new Frequency Allotment Plan to the International Frequency Registration Board for distribution to administrations;

3. that administrations implement the provisions of the transition programme in coordination with ICAO and in conformity with the principles set forth in No. 27/20;

requests

the Secretary-General to bring this Recommendation to the attention of the International Civil Aviation Organization.

RECOMMENDATION No. Aer2 – 5

Relating to the Inclusion of the Band 21 924-22 000 kHz in the Frequency Allotment Plan for the Aeronautical Mobile (R) Service (Appendix 27 Aer2 to the Radio Regulations)

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that there is a need to add a further frequency band to Appendix 27 Aer2, to provide world-wide frequencies suitable for long-range communications and to reduce congestion in the bands currently used;

b) that there is a suitable band at 21 924-22 000 kHz at present allocated to the aeronautical fixed and aeronautical mobile (R) services;

c) that if the band were to be allocated exclusively to the aeronautical mobile (R) service it could be incorporated into Appendix 27 Aer2;

d) that the decision to re-allocate the band could be taken by the World Administrative Radio Conference, 1979;

e) that the decision to incorporate a plan for the band into Appendix 27 Aer2 could be taken by the World Administrative Radio Conference, 1979;

has established

a plan for the band 21 924-22 000 kHz with the relevant associated provisions for modifying the procedures of Appendix 27 Aer2 and related Radio Regulations (see *Annex*);

recommends

1. that the World Administrative Radio Conference, 1979, should consider the allocation of the band 21 924-22 000 kHz exclusively to the aeronautical mobile (R) service to meet the requirements mentioned in considering *a)* above;

2. that, if the World Administrative Radio Conference, 1979 decides on such a re-allocation, it should include the plan for this band with the associated provisions in Appendix 27 Aer2 as an integral part thereof, to come into force on 1 February, 1983; and should make the necessary consequential changes to the Radio Regulations;

urges administrations

to submit proposals to this effect to the World Administrative Radio Conference, 1979.

ANNEX TO RECOMMENDATION No. Aer2 – 5

Outline of changes to be made to Appendix 27 Aer2 and related Radio Regulations

A. APPENDIX 27 Aer2

Table of Contents	*Part II. In the title, replace* 17 970 kHz *by* 22 000 kHz.
No. 27/10	*Replace* 17 970 kHz *by* 22 000 kHz.
No. 27/16	*Add the following new frequencies to the Table of Frequencies:*

kHz 21 924 - 22 000

21 925
21 928
21 931
21 934
21 937
21 940
21 943
21 946
21 949
21 952
21 955
21 958
21 961

21 964
21 967
21 970
21 973
21 976
21 979
21 982
21 985
21 988
21 991
21 994
21 997

25 channels

No. 27/31A	*In the title preceding the number* 27/31A, *replace* 13 MHz and 18 MHz *by* between 13 MHz and 22 MHz;
	in the text, replace 13 MHz and 18 MHz *by* 13 MHz, 18 MHz and 22 MHz;
No. 27/31B	*In the second line, replace* 18 MHz *by* the 18 MHz and 22 MHz bands;
	In the fourth line, after 18 MHz *add* and 22 MHz.
Part II	*In the title replace* 17 970 kHz *by* 22 000 kHz.
No. 27/189	*Add a new column for the new 22 MHz band to the Table as follows:*

Areas	Band (MHz)
	22
	kHz
W I	21 940 21 946 21 952 21 958 21 967 21 973 21 979 21 988 21 997
W II	21 964 21 985

Areas	Band (MHz)
	22
	kHz
W III	21 949 21 970
W IV	21 955 21 976 21 991
W V	21 943 21 961 21 982 21 994

Immediately after No. 27/207, add a new Table for the new 22 MHz band as follows:

ADD 27/207A

bande/*band*/banda 21 924-22 000 **22 MHz**

1	2	3
21 940	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 943	W MONDIALE WORLDWIDE MUNDIAL	C100/V
21 946	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 949	W MONDIALE WORLDWIDE MUNDIAL	C100/III
21 952	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 955	W MONDIALE WORLDWIDE MUNDIAL	C100/IV
21 958	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 961	W MONDIALE WORLDWIDE MUNDIAL	C100/V
21 964	W MONDIALE WORLDWIDE MUNDIAL	C100/II
21 967	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 970	W MONDIALE WORLDWIDE MUNDIAL	C100/III
21 973	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 976	W MONDIALE WORLDWIDE MUNDIAL	C100/IV
21 979	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 982	W MONDIALE WORLDWIDE MUNDIAL	C100/V
21 985	W MONDIALE WORLDWIDE MUNDIAL	C100/II
21 988	W MONDIALE WORLDWIDE MUNDIAL	C100/I
21 991	W MONDIALE WORLDWIDE MUNDIAL	C100/IV
21 994	W MONDIALE WORLDWIDE MUNDIAL	C100/V
21 997	W MONDIALE WORLDWIDE MUNDIAL	C100/I

B. RADIO REGULATIONS

Article 5

Modify the Table of Frequency Allocations as follows:

MOD

kHz
21 870 - 22 000

Region 1	~~Region 2~~	~~Region 3~~
21 870 - ~~22 000~~ 21 924 AERONAUTICAL FIXED ~~AERONAUTICAL MOBILE (R)~~		
21 924 - 22 000 ~~AERONAUTICAL FIXED~~ AERONAUTICAL MOBILE (R)		

Article 7
No. 7378 431
Section II
Replace 18 030 kHz *by* 22 000 kHz.

Article 9
No. 4351 552
Section II
Replace 17 970 kHz *by* 22 000 kHz.

Article 9
No. 4421 589
Section III
Replace 17 970 kHz *by* 22 000 kHz.

RECOMMENDATION No. Aer2 – 6

Relating to the Concordance of the French, English and Spanish Texts of No. 429 of the Radio Regulations

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that doubts have been expressed concerning the concordance of the expressions "régularité de la navigation aérienne" in French, "regularity of flight" in English and "regularidad de la navegación aérea" in Spanish;

b) that this phrase originates from the Convention on International Civil Aviation, Chicago, 1944, drafted in English;

c) that it is essential that the three texts be equivalent in form and content;

d) that its terms of reference do not include the revision of No. **429** of the Radio Regulations;

recommends

that the World Administrative Radio Conference, 1979, should endeavour to overcome this apparent lack of concordance in the texts of No. **429** of the Radio Regulations.

RECOMMENDATION No. Aer2 – 7

Relating to No. 27/123 of Appendix 27 Aer2 – Sub-Area 5B

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) the discussions which took place on the proposed modification of No. **27/123** of Appendix 27 Aer2; and

b) that the interested administrations have agreed to continue consultations between themselves on the matter of Sub-Area 5B;

recommends

1. that consultations should be carried out by the interested administrations in order to arrive at a satisfactory solution;

2. that the administrations concerned would report on the results of their consultation to the World Administrative Radio Conference, 1979, in order to enable the Conference to arrive at a definitive solution on No. **27/123**.

RECOMMENDATION No. Aer2 – 8

To the World Administrative Radio Conference, 1979, Relating to the Inapplicability of Resolution No. 13 to the Aeronautical Mobile (R) Service

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that Resolution No. 13, Geneva, 1959, expressed the opinion that the aeronautical mobile service plans contained in the then Appendix 26 to the Radio Regulations would have to be reviewed;

b) that Resolution No. 13 also stated that an Extraordinary Administrative Radio Conference should be convened to review Appendix 26 and the associated Radio Regulations and to complete its work before the next Ordinary Administrative Radio Conference;

c) that administrative radio conferences of the aeronautical mobile service were held in 1964, 1966, and 1978 and the plans were reviewed;

d) that no further Administrative Radio Conferences are to be convened before the World Administrative Radio Conference, 1979;

recommends

that, in so far as the aeronautical mobile (R) service is concerned, the World Administrative Radio Conference, 1979, should abrogate Resolution No. 13;

invites administrations

to consider whether Resolution No. 13 could be abrogated and to submit proposals to this effect to the World Administrative Radio Conference, 1979.

RECOMMENDATION No. Aer2 – 9

Relating to Public Correspondence with Aircraft

The World Administrative Radio Conference on the Aeronautical Mobile (R) Service, Geneva, 1978,

considering

a) that Recommendation No. 19 (Geneva, 1959) gave an initial indication of interest in public correspondence with aircraft;

b) that some administrations have expressed requirements for long-distance public correspondence with aircraft;

c) that provisions of No. 432 of the Radio Regulations do not permit public correspondence in the exclusive aeronautical mobile bands, unless permitted by special aeronautical regulations;

d) that appropriate satellite systems for this purpose are not yet operational;

recommends

1. that administrations should give due consideration to the technical, operational and administrative aspects of public correspondence with aircraft in order to permit orderly implementation at the appropriate time;

2. that administrations should make proposals on this subject to the next competent World Administrative Radio Conference;

requests the Secretary-General

to bring this Recommendation to the attention of the World Administrative Radio Conference, 1979.

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

96th Congress *2d Session*	SENATE	Executive C

AMENDMENT TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN AMENDMENT TO THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES), DONE AT WASHINGTON MARCH 3, 1973

April 2, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
59-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, an Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, done at Washington, March 3, 1973. The Amendment will provide a legal basis for Parties to the Convention to provide it with necessary financial support. By helping to place the financing of the Convention on International Trade in Endangered Species of Wild Funa and Flora on a sound and permanent basis, the Amendment will strengthen its effectiveness. The report on the Amendment by the Department of State is enclosed for the information of the Senate.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora provides for the control and monitoring of international trade in species endangered, or likely to be endangered, by extinction. The Convention on International Trade in Endangered Species of Wild Fauna and Flora text does not, however, explicitly provide for the funding of Convention on International Trade in Endangered Species of Wild Fauna and Flora Secretariat activities by its Parties. So far the United Nations Environment Program has provided this support. However, the United Nations Environment Program has decided to begin to decrease its support in 1980 and to terminate it by the end of 1983. In March 1979 the Convention on International Trade in Endangered Species of Wild Fauna and Flora Parties adopted interim financial regulations under which the Parties would begin to provide the necessary support. But some Parties require an Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora text providing explicit authority for Party funding in order to give them a legal basis for making contributions under the new financial regulations. Consequently, the Parties held an extraordinary meeting in Bonn on June 22, 1979, and adopted the necessary Amendment. Under the Amendment, the Parties' authority to adopt financial provisions is made explicit by adding the words "and adopt financial provisions" to Article XI3(a), which deals with the functions of the Conference of the Parties.

Under this Amendment and the interim financial regulations the United States could make voluntary contributions to help support the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

I urge the Senate to act favorably on this Amendment at an early date.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 14, 1979.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, an Amendment to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), done at Washington March 3, 1973.

CITES, which entered into force for the United States on July 1, 1975, is designed to establish a system by which States may strictly control the international trade in specimens of species which might be expected to become endangered because of present or potential trade in them. The Amendment will provide a legal basis for CITES Parties to provide necessary financial support to CITES as the United Nations Environment Program (UNEP) phases out the support which it has heretofore provided.

CITES itself contains no explicit provision on Party funding of CITES Secretariat activities. Rather, Article XII of CITES states that the Executive Director of UNEP shall provide a Secretariat for CITES. Until recently, UNEP has been willing to assume the expenses of the Secretariat. However, the Sixth Governing Council of UNEP, reflecting its view that UNEP should serve essentially as a catalyst for international environmental initiatives, decided in May 1978 to reduce gradually its financial support for CITES, beginning in 1980, and to terminate its support altogether by the end of 1983. UNEP also decided not to fund any further meetings of the CITES Parties after the March 1979 meeting in Costa Rica.

UNEP's Governing Council therefore called upon the CITES Parties to develop a Party funding arrangement at their March 1979 meeting. In response, the CITES Parties adopted financial arrangements whereby they will begin in 1980 to make contributions to cover the CITES administrative budget. These contributions will be apportioned according to the U.N. scale, with a minimum of .01 percent and a maximum of 25 percent (U.S. share) of the total annual budget. The contributions will be paid into a Trust Fund to be set up and administered for the purpose by UNEP.

The United States supported adoption of this new system, under which the full United States contribution, to be made on a voluntary basis and subject to the availability of appropriated funds, will begin to be paid in 1981 and is expected that year to be approximately $138,000. The United States also agreed to make an interim contribution of $100,000 to the 1980 CITES budget. (Prior to making these commitments the Department of State sought and obtained Office of Management and Budget approval under the new commitments procedure.)

The newly adopted financial arrangements do not define the character of Party contributions, but leave it open to each Party to specify whether, as in the United States' case, its contribution is voluntary, in accordance with its own budgetary provisions. The financial arrangements are provisional in nature and will be in effect only for the 1980–81 biennium; they will be reviewed and modified as necessary at the 1981 Conference of the CITES Parties in light of experience.

In agreeing to the above arrangements for Party funding, several Parties, including some major potential donors, stated that in order to give them a legal basis for making their contributions the CITES text would need amendment to provide explicit authority for Party funding. One such Party, the Federal Republic of Germany proposed to convene an extraordinary conference of the Parties, as required for amendment of the Convention, in Bonn on June 22, 1979, simultaneously with the already scheduled June 11–23 conference there on the proposed migratory species convention.

The United States did not believe that an Amendment to the CITES text was necessary to allow us to contribute to Secretariat funding Nevertheless, we were willing to consent to such an Amendment if other donors felt it legally necessary for them. The Federal Republic of Germany proposed a draft financial Amendment to add to CITES Article XI, paragraph 3(a), on the functions of the Conference of the Parties, the words "and adopt financial provisions". The proposed Amendment was adopted by a vote of 22 to 1 at the extraordinary conference. Once two-thirds of the Parties have deposited an instrument of acceptance, the Amendment will come into force in 60 days for those Parties which have accepted it.

We recognize a remote contingency that under such an Amendment the Parties might adopt binding financia provisions by less than a unanimous vote over an objection by the United States. (The current provisional financial arrangements call for adoption of the budget by a three-fourths majority.) The United States then might have no alternative to accepting such an obligation other than to withdraw from CITES. While we cannot entirely exclude this eventuality, we see such an action by the other Parties as highly unlikely. The formulations of the proposed Amendment and of the provisional financial arrangements now in effect were compromise wording intended to accommodate varying preferred approaches by the Parties. We do not expect the other CITES Parties to seek to impose any financial obligation on the United States, the largest contributor to the CITES budget under the recently adopted arrangements, over a United States objection.

Before the United States would accept any greater proportional voluntary contribution than it has under the recently adopted system, or any bindingfi obligation whatever under financial provisions which may be developed by the Conference of the Parties pursuant to this Amendment, we would seek new authorization from the Office of Management and Budget and the White House.

The CITES Secretariat has urged Parties to take as soon as possible the measures necessary for ratification of the Amendment, in order to ensure its entry into force in the near future. The Department of the Interior, which participated with the Department of State in the negotiation of CITES and of the present Amendment, concurs in the view that early ratification of the Amendment is most desirable.

I recommend that the Amendment be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA.

AMENDMENT

In accordance with Article XVII of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington, D.C. on 3 March 1973, an extraordinary meeting of the Conference of the Parties was convened in Bonn (Federal Republic of Germany) on 22 June 1979.

The following Parties were represented: Botswana, Canada, Chile, Costa Rica, Denmark, Ecuador, Egypt, Finland, France, Germany (Federal Republic of), India, Kenya, Nigeria, Norway, Panama, Senegal, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Union of Soviet Socialist Republics and Zaire.

By the requisite two-thirds majority of Parties present and voting, the meeting adopted the following amendment to the Convention:

At the end of Article XI, paragraph 3, sub-paragraph (a), the words "*, and adopt financial provisions*" shall be added.

PETER H. SAND,
Secretary General.

BONN, *June 22, 1979.*

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96TH CONGRESS
2d Session

SENATE

EXECUTIVE
D

THE INTERNATIONAL NATURAL RUBBER AGREEMENT, 1979

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE INTERNATIONAL NATURAL RUBBER AGREEMENT, 1979, ADOPTED AT GENEVA ON OCTOBER 5, 1979, BY A CONFERENCE CONVENED BY THE UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD), AND SIGNED ON BEHALF OF THE UNITED STATES ON JANUARY 8, 1980

APRIL 2, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

59-118 O

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the International Natural Rubber Agreement, 1979, adopted at Geneva October 5, 1979. The Agreement was signed on behalf of the United States of America on January 8, 1980. The report of the Department of State is enclosed for the information of the Senate.

The Agreement seeks to stabilize natural rubber prices without disturbing long-term market trends and to foster increased natural rubber supplies at reasonable prices. Natural rubber prices have traditionally displayed considerable instability, with strong rises—notably in 1951, 1955, 1960 and 1973–74—followed by sharp and sudden declines. This instability has not only destabilized producers' incomes and complicated national planning for the developing exporting countries, it has also contributed to inflation in industrial countries. In addition, it has discouraged needed long-term investments in natural rubber production. This is particularly important to the United States, which as the world's largest consumer of natural rubber has a substantial interest in helping to assure adequate future supplies of this commodity.

The Agreement provides for the establishment of an international buffer stock of 550,000 metric tons of natural rubber to be the instrument for price stabilization. The stock will be used to defend a price range and insure consistency with longer term market conditions. The financing of the buffer stock will be shared equally between importing and exporting members. Each government's share will depend upon its votes in the Organization as determined by net exports or imports. The share of the United States will be between 12.5 and 15.5 percent of the total, depending on the number of governments that become parties to the Agreement. To meet the financial obligations arising from our membership, $88 million has been included in the fiscal year 1981 budget. The Agreement is to become effective on or after October 1, 1980, when governments accounting for sufficient net exports and net imports have ratified the Agreement or agreed to apply it provisionally. It will remain in force for five years from the date of the Agreement's provisional or definitive entry into force (whichever occurs first), but may be terminated earlier or extended for up to two more years. In addition, provisional operation of the Agreement without subsequent definitive entry into force is limited to 18 months. Upon termination of the Agreement, the United States' contribution and share of the Agreement's assets will be refunded within a period not to exceed three years.

Th Agreement should provide substantial benefits for consumers of natural rubber. The buffer stock is sufficiently large to provide adequate protection for both the maximum and minimum levels of the price range, thereby providing balanced protection for all members. Exporting members will attempt to ensure continuous availability of natural rubber supplies to consumers, and the Council may make recommendations to members on ways to avert potential shortages. Finally, by moderating price increases during periods of high demand, the buffer stock could also help to reduce inflationary pressure on the prices of manufactured rubber products.

The Agreement is consistent with our broad foreign policy objectives. It demonstrates our willingness to negotiate commodity agreements where practicable and in the interest of industrialized and developing countries. It constitutes a significant achievement in the North-South dialogue. It will also strengthen our relations with ASEAN, since natural rubber is particularly important to four of its members—Malaysia, Indonesia, Thailand and Singapore—which account collectively for nearly 90 percent of the world trade in natural rubber.

For all of these reasons, I urge the Senate to give this Agreement prompt consideration and its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, March 13, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the International Natural Rubber Agreement, 1979, adopted at Geneva on October 5, 1979 by a conference convened by the United Nations Conference on Trade and Development (UNCTAD), and signed on behalf of the United States on January 8, 1980.

The market for natural rubber has traditionally been marked by a considerable degree of price volatility, which has had adverse consequences for both producers and consumers of this industrial raw material. This pattern of instability has frequently disrupted the incomes of individual producers and had a negative impact on their planning and investment activities. This is particularly so because smallholders, subsistence farmers with under 10 acres of land who number over 2.5 million individuals, account for three quarters of world production. These disruptions have contributed to recurring supply problems and a long-term lag in supply expansion. This is especially important to the United States which produces no natural rubber but imports some 770,000 metric tons of the commodity annually, and is the world's single largest consumer.

An international agreement could offer greater predictability of smallholder incomes, while also encouraging investments that would boost natural rubber production and stimulate rural development. For consumers, of which the United States is the largest, an agreement could help to assure future needed supplies at reasonable prices. In addition to its stimulation of expanded production, the Agreement could through its buffer stock help dampen temporary but sharp price rises which might otherwise fuel inflationary tendencies and expectations.

With these factors in mind, the United States entered discussions on an international commodity agreement (ICA) in UNCTAD. Over the next two years preparatory meetings explored the feasibility and desirability of an ICA for natural rubber. Formal negotiations, involving over 60 countries and four sessions spanning a total of 12 weeks, commenced in November 1978 and were concluded October 5, 1979.

The Agreement which emerged from that process, I believe, is a well structured accord which offers a fair balance of benefits and responsibilities for both consumers and producers of natural rubber.

The objectives of the Agreement are to stabilize prices of natural rubber without disturbing long-term market trends and to ensure expanded future supplies at reasonable prices. An international buffer stock of 550,000 metric tons of natural rubber will serve as the instrument for price stabilization. In view of our interest in expanding supplies, no provision is included for production or export controls, which are contained in some previous ICA's.

The financing for acquisition and operation of the buffer stock, which is to be held in both exporting and importing member countries, will be shared equally between exporters and importers as separate groups. Each government's individual share will be determined by its votes in the Council, which are a function of its level of net imports or exports in recent years. The United States share of total importing member votes will be between 25 and 31 percent initially, depending upon the number of countries which become parties. Our share of the total contributions by all members would range from 12.5 to 15.5 percent.

The buffer stock will be established and employed to defend a price range designed to insure consistency with long-term market trends. The range consists of an adjustable reference price, with stabilization bands of plus/minus 15 and 20 percent constructed about it, which will be periodically adjusted upward or downward within pre-agreed limits in response to market price developments and activities of the buffer stock. The reference price initially will be set at 45 cents per pound, which is approximately equal to the average market price over the three years preceding the negotiations on the Agreement.

Several provisions are aimed at expanding natural rubber supplies at reasonable prices to consumers. Exporting members undertake to pursue policies and programs which insure continuous availability of natural rubber supplies, and the Council may make recommendations to members on steps to avert a potential shortage of natural rubber. In addition, the Council will identify and propose measures that could be taken to expand and improve natural rubber production, productivity, and marketing. The Council will also consult with members on government natural rubber policies directly affecting supply or demand, and it may submit recommendations to members for their consideration.

The Agreement will remain in force for 5 years from the date of the Agreement's provisional or definitive entry into force (whichever occurs first), but may be terminated earlier or extended for up to 2 more years. In addition, provisional operation of the Agreement without subsequent definitive entry into force may be limited to 18 months. The Agreement will enter into force definitively on or after October 1, 1980, if governments accounting for at least 80 percent of the net exports and imports of countries which participated in the negotiations have ratified it; or provisionally on or after October 1, 1980, if by October 1, 1982, governments accounting for 65 percent of net exports and imports have ratified it or agreed to apply it provisionally.

The Agreement is consistent with and supportive of our broad foreign policy objectives. It demonstrates our desire to promote international economic cooperation. It gives credence to your pledge, made during your March 17, 1977, speech to the United Nations, to consider with a positive and open attitude the negotiation of agreements to stabilize commodity prices. As the first new accord to emerge from UNCTAD's Integrated Commodities Program, it is a milestone in the North-South dialogue. More particularly, it will strengthen our relationship with ASEAN and also make a substantial contribution to the welfare of several friendly countries in Southeast Asia, whom we have strongly committed ourselves to support.

In recommending transmittal of the Agreement to the Senate, I should also note the financial implications of participation for the United States. To meet our obligations arising from membership, there has been included in your fiscal year 1981 budget $88 million for United States contributions. In particular, the Agreement stipulates that members will collectively make an initial contribution equivalent to approximately $32 million, of which the United States share of $5 million would be contributed in fiscal year 1981. The remaining $83 million, held in a multi-year account, will be available for call up by the Council as necessary to finance the United States share of buffer stock purchases. Although we believe the requested $88 million should be sufficient to meet potential United States obligations, a supplemental authorization and appropriation might be required in the event of extremely adverse economic conditions during the life of the Agreement.

The Departments of Commerce and Treasury, the United States Trade Representative, the Office of Management and Budget, and other relevant agencies of the Executive Branch concur in my recommendation that the Agreement be submitted to the Senate for advice and consent to ratification. I hope that the United States will become a party in the near future.

Respectfully submitted.

CYRUS VANCE.

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ANNEXES

Annex A Shares of individual exporting countries in total net exports of countries participating in the United Nations Conference on Natural Rubber as established for the purposes of article 61 34
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PREAMBLE

The contracting parties—

Recalling the Declaration and the Programme of Action on the Establishment of a New International Economic Order,[1]

Recognizing in particular the importance of the United Nations Conference on Trade and Development resolution 93 (IV), adopted at its fourth session, and resolution 124 (V), adopted at its fifth session, on the Integrated Programme for Commodities.

Recognizing the importance of natural rubber to the economies of members, particularly to the exports of exporting members and to supply requirements of importing members,

Recognizing further that the stabilization of natural rubber prices is in the interests of producers, consumers and natural rubber markets, and that an international natural rubber agreement can significantly assist the growth and development of the natural rubber industry to the benefit of both producers and consumers,

Have agreed as follows:

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[1] General Assembly resolutions 3201 (S-VI) and 3202 (S-VI) of 1 May 1974.

INTERNATIONAL NATURAL RUBBER AGREEMENT, 1979

CHAPTER I—OBJECTIVES

Article 1

OBJECTIVES

The objectives of the International Natural Rubber Agreement, 1979 (hereinafter referred to as this Agreement), with a view to achieving the relevant objectives as adopted by the United Nations Conference on Trade and Development in its resolutions 93 (IV) and 124 (V) on the Integrated Programme for Commodities, are *inter alia* as follows:

(a) to achieve a balanced growth between the supply of and demand for natural rubber, thereby helping to alleviate the serious difficulties arising from surpluses or shortages of natural rubber;

(b) to achieve stable conditions in natural rubber trade through avoiding excessive natural rubber price fluctuations, which adversely affect the long-term interests of both producers and consumers, and stabilizing these prices without distorting long-term market trends, in the interests of producers and consumers;

(c) to help stabilize the export earnings from natural rubber of exporting members, and to increase their earnings based on expanding natural rubber export volumes at fair and remunerative prices, thereby helping to provide the necessary incentives for a dynamic and rising rate of production and the resources for accelerated economic growth and social development;

(d) to seek to ensure adequate supplies of natural rubber to meet the requirements of importing members at fair and reasonable prices and to improve the reliability and continuity of these supplies;

(e) to take feasible steps in the event of a surplus or shortage of natural rubber to mitigate the economic difficulties that members might encounter;

(f) to seek to expand international trade in and to improve market access for natural rubber and processed products thereof;

(g) to improve the competitiveness of natural rubber by encouraging research and development on the problems of natural rubber;

(h) to encourage the efficient development of the natural rubber economy by seeking to facilitate and promote improvements in the processing, marketing and distribution of raw natural rubber; and

(i) to further international co-operation in and consultations on natural rubber matters affecting supply and demand, and to facilitate promotion and co-ordination of natural rubber research, assistance and other programmes.

Chapter II—Definitions

Article 2

DEFINITIONS

For the purposes of this Agreement:

(1) "Natural rubber" means the unvulcanized elastomer, whether in solid or liquid forms, from *Hevea brasiliensis* and any other plant which the Council may decide for the purposes of this Agreement.

(2) "Contracting party" means a Government, or an intergovernmental organization referred to in article 5, which has consented to be bound by this Agreement provisionally or definitively.

(3) "Member" means a contracting party as defined in definition (2) above.

(4) "Exporting member" means a member which exports natural rubber and has declared itself to be an exporting member, subject to the agreement of the Council.

(5) "Importing member" means a member which imports natural rubber and has declared itself to be an importing member, subject to the agreement of the Council.

(6) "Organization" means the International Natural Rubber Organization referred to in article 3.

(7) "Council" means the International Natural Rubber Council referred to in article 6.

(8) "Special vote" means a vote requiring at least two thirds of the votes cast by exporting members present and voting and at least two thirds of the votes cast by importing members present and voting, counted separately, on condition that these votes are cast by at least half the members in each category present and voting.

(9) "Exports of natural rubber" means any natural rubber which leaves the customs territory of any member, and "imports of natural rubber" means any natural rubber which enters the customs territory or any member, provided that for the purposes of these definitions, customs territory shall, in the case of a member which comprises more than one customs territory, be deemed to refer to the combined customs territories of that member.

(10) "Distributed simple majority vote" means a vote requiring more than half of the total votes of exporting members present and voting and more than half of the total votes of importing members present and voting, counted separately.

(11) "Freely usable currencies" means the deutsche mark, the French franc, the Japanese yen, the pound sterling, and the United States dollar.

(12) "Financial year" means the period from 1 January to 31 December inclusive.

CHAPTER III—ORGANIZATION AND ADMINISTRATION

Article 3

ESTABLISHMENT, HEADQUARTERS AND STRUCTURE OF THE INTERNATIONAL NATURAL RUBBER ORGANIZATION

1. The International Natural Rubber Organization is hereby established to administer the provisions and supervise the operation of this Agreement.

2. The Organization shall function through the International Natural Rubber Council, its Executive Director and its staff, and such other bodies as are provided for in this Agreement.

3. At its first session the Council shall, by special vote, decide that the headquarters of the Organization shall be in Kuala Lumpur or London.

4. The headquarters of the Organization shall at all times be located in the territory of a member.

Article 4

MEMBERSHIP IN THE ORGANIZATION

1. There shall be two categories of membership, namely,
   (a) exporting, and
   (b) importing.

2. The Council shall establish criteria regarding a change by a member in its category of membership as defined in paragraph 1 of this article, taking fully into account the provisions of articles 25 and 28. A member which meets such criteria may change its category of membership subject to the agreement of the Council by special vote.

3. Each contracting party shall constitute a single member of the Organization.

Article 5

MEMBERSHIP BY INTERGOVERNMENTAL ORGANIZATIONS

1. Any reference in this Agreement to a "Government" or "Governments" shall be construed as including a reference to the European Economic Community and to any intergovernmental organization having responsibilities in respect of the negotiation, conclusion and application of international agreements, in particular commodity agreements. Accordingly, any reference in this Agreement to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession shall, in the case of such intergovernmental organizations, be construed as including a reference to signature, ratification, acceptance or approval, or to notification of provisional application, or to accession, by such intergovernmental organizations.

2. In the case of votes on matters within their competence, such intergovernmental organizations shall exercise their voting rights with a number of votes equal to the total number of votes attributed, in accordance with article 15, to their member States.

CHAPTER IV—THE INTERNATIONAL NATURAL RUBBER COUNCIL

Article 6

COMPOSITION OF THE INTERNATIONAL NATURAL RUBBER COUNCIL

1. The highest authority of the Organization shall be the International Natural Rubber Council, which shall consist of all the members of the Organization.

2. Each member shall be represented in the Council by one delegate, and may designate alternates and advisers to attend sessions of the Council.

3. An alternate delegate shall be empowered to act and vote on behalf of the delegate during the latter's absence or in special circumstances.

Article 7

POWERS AND FUNCTIONS OF THE COUNCIL

1. The Council shall exercise all such powers and perform or arrange for the performance of all such functions as are necessary to carry out the provisions of this Agreement.

2. The Council shall, by special vote, adopt such rules and regulations as are necessary to carry out the provisions of this Agreement and are consistent therewith. These shall include its own rules of procedure and those of the committees established under article 19, rules for the administration and operation of the Buffer Stock, and the financial and staff regulations of the Organization. The Council may, in its rules of procedure, provide for a procedure whereby it may, without meeting, decide specific questions.

3. The Council shall keep such records as are required for the performance of its functions under this Agreement.

4. The Council shall publish an annual report on the activities of the Organization and such other information as it considers appropriate.

Article 8

BORROWING IN EXCEPTIONAL CIRCUMSTANCES

1. The Council may, by special vote, borrow from commercial sources for the Buffer Stock and/or Administrative Accounts to cover any deficits on either Account caused by lags between authorized expenditures and required contributions. If the borrowing results from a delay in the receipt of a contribution from a member, the financial costs incurred by the Council in such borrowing shall be met by the member in arrears in addition to the full payment of its contribution.

2. Any member may, at its own discretion, elect to contribute cash directly to the appropriate Account, in lieu of commercial borrowing by the Council for that member's share of the required funds.

Article 9

DELEGATION OF POWERS

1. The Council may, by special vote, delegate to any committee established under article 19 the exercise of any or all of its powers which, in accordance with the provisions of this Agreement, do not require a special vote of the Council. Notwithstanding this delegation, the Council may at any time discuss and decide any issue that may have been delegated to any of its committees.

2. The Council may, by special vote, revoke any power delegated to a committee.

Article 10

CO-OPERATION WITH OTHER ORGANIZATIONS

1. The Council may make whatever arrangements are appropriate for consultation or co-operation with the United Nations, its organs and specialized agencies, and other intergovernmental organizations as appropriate.

2. The Council may also make arrangements for maintaining contact with appropriate international non-governmental organizations.

Article 11

ADMISSION OF OBSERVERS

The Council may invite any non-member Government, or any of the organizations referred to in article 10, to attend as an observer any of the meetings of the Council or of any committee established under article 19.

Article 12

CHAIRMAN AND VICE-CHAIRMAN

1. The Council shall elect for each year a Chairman and a Vice-Chairman.

2. The Chairman and the Vice-Chairman shall be elected, one from among the representatives of exporting members and the other from among the representatives of importing members. These offices shall alternate each year between the two categories of members, provided, however, that this shall not prohibit the re-election of either or both, under exceptional circumstances, by special vote of the Council.

3. In the temporary absence of the Chairman, he shall be replaced by the Vice-Chairman. In the temporary absence of both the Chairman and the Vice-Chairman or the permanent absence of one or both of them, the Council may elect new officers from among the representatives of the exporting members and/or from among the representatives of the importing members, as appropriate, on a temporary or permanent basis as may be required.

4. Neither the Chairman nor any other officer presiding at a meeting of the Council shall vote at that meeting. He may, however, empower another representative from the same category of membership to exercise the voting rights of the member which he represents.

Article 13

EXECUTIVE DIRECTOR, BUFFER STOCK MANAGER AND OTHER STAFF

1. The Council shall, by special vote, appoint an Executive Director and a Buffer Stock Manager.

2. The terms and conditions of appointment of the Executive Director and the Buffer Stock Manager shall be determined by the Council.

3. The Executive Director shall be the chief administrative officer of the Organization and shall be responsible to the Council for the administration and operation of this Agreement in accordance with decisions of the Council.

4. The Buffer Stock Manager shall be responsible to the Executive Director and the Council for the functions conferred upon him by this Agreement, as well as for such additional functions as the Council may determine. The Buffer Stock Manager shall be responsible for the day-to-day operation of the Buffer Stock, and shall keep the Executive Director informed of the general operations of the Buffer Stock so that the Executive Director may ensure its effectiveness in meeting the objectives of this Agreement.

5. The Executive Director shall appoint the staff in accordance with regulations established by the Council. The staff shall be responsible to the Executive Director.

6. Neither the Executive Director nor any member of the staff, including the Buffer Stock Manager, shall have any financial interest in the rubber industry or trade, or associated commercial activities.

7. In the performance of their duties, the Executive Director, the Buffer Stock Manager and other staff shall not seek or receive instructions from any member or from any other authority external to the Council or to any committee established under article 19. They shall refrain from any action which might reflect on their positions as international officials responsible only to the Council. Each member shall respect the exclusively international character of the responsibilities of the Executive Director, the Buffer Stock Manager and other staff and shall not seek to influence them in the discharge of their responsibilities.

Article 14

SESSIONS

1. As a general rule, the Council shall hold one regular session in each half of the year.

2. In addition to sessions in circumstances specifically provided for in this Agreement, the Council shall also meet in special session whenever it so decides or at the request of:

(a) the Chairman of the Council;
(b) the Executive Director;
(c) a majority of the exporting members;

(d) a majority of the importing members;

(e) an exporting member or exporting members holding at least 200 votes; or

(f) an importing member or importing members holding at least 200 votes.

3. Sessions shall be held at the headquarters of the Organization unless the Council, by special vote, decides otherwise. If on the invitation of any member the Council meets elsewhere than at the headquarters of the Organization, that member shall pay the additional costs incurred by the Council.

4. Notice of any sessions and the agenda for such sessions shall be communicated to members by the Executive Director at least 30 days in advance, except in cases of emergency when notice shall be communicated at least seven days in advance.

Article 15

DISTRIBUTION OF VOTES

1. The exporting members shall together hold 1,000 votes and the importing members shall together hold 1,000 votes.

2. Each exporting member shall receive one initial vote out of the 1,000 votes except that in the case of an exporting member with net exports of less than 10,000 tonnes annually the initial vote shall not apply. The remainder of such votes shall be distributed among the exporting members as nearly as possible in proportion to the volume of their respective net exports of natural rubber for the period of five calendar years commencing six calendar years prior to the distribution of votes, except that Singapore's net exports of natural rubber for such period shall be calculated at 13 percent of its total exports for that period.

3. The votes of importing members shall be distributed among them in proportion to the average of their respective net imports of natural rubber during the period of three calendar years commencing four calendar years prior to the distribution of votes, except that each importing member shall receive one vote even if its proportional net import share is otherwise not sufficiently large to so justify.

4. For the purposes of paragraphs 2 and 3 of this article, paragraphs 2 and 3 of article 28 relating to contributions of importing members and article 39, the Council shall, at its first session, establish a table of net exports of exporting members and a table of net imports of importing members which shall be revised annually in accordance with this article.

5. There shall be no fractional votes. Except as provided in paragraph 3 of this article, any fraction less than 0.5 shall be rounded downward, and any fraction greater than or equal to 0.5 shall be rounded upward.

6. The Council shall distribute the votes for each financial year at the beginning of the first session of that year in accordance with the provisions of this article. Such distribution shall remain in effect for the rest of that year, except as provided for in paragraph 7 of this article.

7. Whenever the membership of the Organization changes or when any member has its voting rights suspended or restored under any provision of this Agreement, the Council shall redistribute the votes within the affected category or categories of members in accordance with the provisions of this article.

8. In the event of the exclusion of a member pursuant to article 65, or the withdrawal of a member pursuant to article 64 or 63, resulting in the reduction of the total trade share of those members remaining in either category below 80 per cent, the Council shall meet and decide on the terms, conditions and future of this Agreement, including in particular the need to maintain effective buffer stock operations without causing undue financial burden to the remaining members.

Article 16

VOTING PROCEDURE

1. Each member shall be entitled to cast the number of votes it holds in the Council and shall not be entitled to divide its votes.

2. By written notification to the Chairman of the Council, any exporting member may authorize any other exporting member, and any importing member may authorize any other importing member, to represent its interests and to exercise its voting rights at any session or meeting of the Council.

3. A member authorized by another member to cast the latter member's votes shall cast such votes as authorized.

4. When abstaining, a member shall be deemed not to have cast its votes.

Article 17

QUORUM

1. The quorum for any meeting of the Council shall be the presence of a majority of exporting members and a majority of importing members, provided that such members hold at least two thirds of the total votes in their respective categories.

2. If there is no quorum in accordance with paragraph 1 of this article on the day fixed for the meeting and on the following day, the quorum on the third day and thereafter shall be the presence of a majority of exporting members and a majority of importing members, provided that such members hold a majority of the total votes in their respective categories.

3. Representation in accordance with paragraph 2 of article 16 shall be considered as presence.

Article 18

DECISIONS

1. All decisions of the Council shall be taken and all recommendations shall be made by distributed simple majority vote, unless otherwise provided for in this Agreement.

2. Where a member avails itself of the provisions of article 16 and its votes are cast at a meeting of the Council, such member shall, for the purpose of paragraph 1 of this article, be considered as present and voting.

Article 19

ESTABLISHMENT OF COMMITTEES

1. The following committees are hereby established:
   - (a) Committee on Administration;
   - (b) Committee on Buffer Stock Operations;
   - (c) Committee on Statistics; and
   - (d) Committee on Other Measures.

Additional committees may also be established by special vote of the Council.

2. Each committee shall be responsible to the Council. The Council shall, by special vote, determine the membership and terms of reference of each committee.

Article 20

PANEL OF EXPERTS

1. The Council shall establish a panel of experts from the rubber industry and trade of exporting and importing members.

2. The Panel shall be available to provide advice and assistance to the Council and its committees, particularly on buffer stock operations and on the other measures referred to in article 44.

3. The membership, functions and administrative arrangements of the Panel shall be determined by the Council.

CHAPTER V—PRIVILEGES AND IMMUNITIES

Article 21

PRIVILEGES AND IMMUNITIES

1. The Organization shall have legal personality. It shall in particular have the capacity to contract, to acquire and dispose of movable and immovable property, and to institute legal proceedings.

2. The Organization shall, as soon as possible after the entry into force of this Agreement, seek to conclude with the Government of the country in which the headquarters of the Organization is to be situated (hereinafter referred to as the host Government) an agreement (hereinafter referred to as Headquarters Agreement) relating to such status, privileges and immunities of the Organization, of its Executive Director, staff and experts, and of members' delegations, as are reasonably necessary for the purpose of discharging their functions.

3. Pending the conclusion of the Headquarters Agreement, the Organization shall request the host Government to grant, to the extent consistent with its laws, exemption from taxation on remuneration paid by the Organization to its employees, and on the assets, income and other property of the Organization.

4. The Organization may also conclude, with one or more Governments, agreements to be approved by the Council relating to such privileges and immunities as may be necessary for the proper functioning of this Agreement.

5. If the headquarters of the Organization is moved to another country, the Government of that country shall, as soon as possible,

conclude with the Organization a Headquarters Agreement to be approved by the Council.

6. The Headquarters Agreement shall be independent of this Agreement. It shall, however, terminate:

(a) by agreement between the host Government and the Organization;

(b) in the event that the headquarters of the Organization is moved from the country of the host Government; or

(c) in the event that the Organization ceases to exist.

CHAPTER VI—ACCOUNTS AND AUDIT

Article 22

FINANCIAL ACCOUNTS

1. For the operation and administration of this Agreement, there shall be established two accounts:

(a) the Buffer Stock Account; and

(b) the Administrative Account.

2. All the following receipts and expenditures in the creation, operation and maintenance of the Buffer Stock shall be brought into the Buffer Stock Account: contributions from members under article 28, borrowings for the Buffer Stock Account under article 8, repayment of principal and interest on such borrowings, revenues from sales of buffer stocks, interest on deposits of the Buffer Stock Account, stock acquisition costs, commissions, storage, transportation and handling charges, insurance, and costs of rotation. The Council may, however, by special vote, bring any other type of receipts or expenditures attributable to buffer stock transactions or operations into the Buffer Stock Account.

3. All other receipts and expenditures relating to the operation of this Agreement shall be brought into the Administrative Account. Such expenditures shall normally be met by contributions from members assessed in accordance with article 25.

4. The Organization shall not be liable for the expenses of delegations or observers to the Council or to any committee established under article 19.

Article 23

FORM OF PAYMENT

Cash payments to the Administrative and Buffer Stock Accounts shall be payable in freely usable currencies or currencies which are convertible in the major foreign exchange markets into freely usable currencies, and shall be exempt from foreign exchange restrictions.

Article 24

AUDIT

1. The Council shall appoint auditors for the purpose of auditing its books of account.

2. An independently audited statement of the Administrative and Buffer Stock Accounts shall be made available to members as soon as possible, but not earlier than three months, after the close of each financial year and be considered for approval by the Council at its next session as appropriate. A summary of the audited accounts and balance sheet shall thereafter be published.

CHAPTER VII—THE ADMINISTRATIVE ACCOUNT

Article 25

BUDGET CONTRIBUTIONS

1. The Council shall at its first session after the entry into force of this Agreement approve the budget of the Administrative Account for the period between the date of entry into force and the end of the first financial year. Thereafter, during the second half of each financial year, the Council shall approve the budget of the Administrative Account for the following financial year. The Council shall assess the contribution of each member to that budget in accordance with paragraph 2 of this article.

2. The contribution of each member to the administrative budget for each financial year shall be in the proportion which the number of its votes at the time the administrative budget for that financial year is approved bears to the total votes of all the members. In assessing contributions, the votes of each member shall be calculated without regard to the suspension of any member's voting rights or any redistribution of votes resulting therefrom.

3. The initial contribution to the administrative budget for any Government which becomes a member after the entry into force of this Agreement shall be assessed by the Council on the basis of the number of votes to be held by it and the period remaining in the current financial year, but the assessment made upon other members shall not be altered.

Article 26

PAYMENT OF CONTRIBUTIONS TO THE ADMINISTRATIVE BUDGET

1. Contributions to the first administrative budget shall become due on a date to be decided by the Council at its first session. Contributions to subsequent administrative budgets shall become due on the first day of each financial year. The contribution of a Government which becomes a member after the entry into force of this Agreement, assessed in accordance with paragraph 3 of article 25, shall, for the financial year concerned, become due on a date to be decided by the Council.

2. If a member has not paid its full contribution to the administrative budget within two months after such contribution becomes due in accordance with paragraph 1 of this article, the Executive Director shall request that member to make payment as quickly as possible. If a member has not paid its contribution within two months after such request by the Executive Director, its voting rights in the Organization shall be suspended unless the Council, by special vote, de-

cides otherwise. If a member has still not paid its contribution within four months after such request by the Executive Director, all rights of that member under this Agreement shall be suspended by the Council unless the Council, by special vote, decides otherwise.

3. For contributions received late, the Council shall levy an interest charge at the prime rate in the host country from the date the contributions become due, or at the commercial rate in the event of borrowing under article 8, whichever is appropriate.

4. A member whose rights have been suspended under paragraph 2 of this article shall in particular remain liable to pay its contribution and to meet any other of its financial obligations under this Agreement.

CHAPTER VIII—THE BUFFER STOCK

Article 27

SIZE OF THE BUFFER STOCK

In order to achieve the objectives of this Agreement, an international Buffer Stock shall be established. The total capacity of the Buffer Stock shall be of 550,000 tonnes. It shall be the sole instrument of market intervention for price stabilization in this Agreement. The Buffer Stock shall comprise:

(a) The normal Buffer Stock of 400,000 tonnes, and

(b) The contingency Buffer Stock of 150,000 tonnes.

Article 28

FINANCING OF THE BUFFER STOCK

1. Members commit themselves to finance the total cost of the international Buffer Stock of 550,000 tonnes established under article 27.

2. The financing of both the normal Buffer Stock and the contingency Buffer Stock shall be shared equally between the exporting and importing categories of members. Contributions of members to the Buffer Stock Account shall be apportioned according to their shares of the votes in the Council, except as provided for in paragraphs 3 and 4 of this article.

3. Any importing member whose share of total net imports as set out in the table to be established by the Council under paragraph 4 of article 15 represents 0.1 per cent or less of total net imports shall contribute to the Buffer Stock Account as follows:

(a) If its share of total net imports is less than or equal to 0.1 per cent but more than 0.05 per cent, such member shall contribute an amount assessed on the basis of its actual share of total net imports;

(b) If its share of total net imports is 0.05 per cent or less, such member shall contribute an amount assessed on the basis of a share of 0.05 per cent of total net imports.

4. During any period in which this Agreement is in force provisionally either under paragraph 2 or subparagraph (b) of paragraph 4 of article 61, the financial commitment of each exporting or import-

ing member to the Buffer Stock Account shall not in total exceed that member's contribution, calculated on the basis of the number of votes corresponding to the percentage shares set out in the tables to be established by the Council under paragraph 4 of article 15, of the totals of 275,000 tonnes falling to the exporting and importing categories of members respectively. The financial obligations of members when this Agreement is in force provisionally shall be shared equally by exporting and importing categories of members. At any time when the aggregate commitment of one category exceeds that of the other, the larger of the two aggregates shall be brought equal to the smaller of the two aggregates, each member's votes in the aggregate being reduced in proportion to the shares of votes derived from the tables to be established by the Council under paragraph 4 of article 15.

5. The total costs of the normal Buffer Stock of 400,000 tonnes shall be financed by contributions by members in cash to the Buffer Stock Account. Such contributions may, when relevant, be paid by the appropriate agencies of members concerned.

6. The total costs of the contingency Buffer Stock of 150,000 tonnes shall be financed by contributions by members in the form of:

(a) cash borrowed from commercial sources by the Council upon the security of both stock warrants and government guarantees/government undertakings, and/or

(b) cash.

Such contributions may, when relevant, be provided by the appropriate agencies of members concerned.

7. The choice under subparagraph (a) or (b) of paragraph 6 of this article, or both, shall be at the discretion of each member; in all cases, the cash shall be deposited in the Buffer Stock Account. In the case of borrowing under subparagraph (a) of paragraph 6, the value of stock warrants, as a proportion of the value of the total Buffer Stock at the time, shall not exceed those members' proportionate shares of votes in the Council. Members on whose behalf the Council has undertaken commercial borrowing under subparagraph (a) of paragraph 6 shall be responsible for all their respective liabilities arising from such borrowing.

8. The total costs of the 550,000-tonne international Buffer Stock shall be paid from the Buffer Stock Account. Such costs shall include all expenses involved in acquiring and operating the 550,000-tonne international Buffer Stock. In the event that the estimated cost, as given in annex C to this Agreement, cannot fully cover the total cost of acquisition and operations of the Buffer Stock, the Council shall meet and make the necessary arrangements to call up the required contributions to cover such costs according to percentage shares of votes.

Article 29

PAYMENT OF CONTRIBUTIONS TO THE BUFFER STOCK ACCOUNT

1. There shall be an initial contribution in cash to the Buffer Stock Account equivalent to 70 million Malaysian ringgits. This contribution shall be apportioned among all members according to their percentage shares of votes taking in consideration paragraph 3 of article

28. The contribution shall be called as soon as the Executive Director has been informed by all members that they are in a position to meet the financial requirements, within 18 months from the date of provisional entry into force of this Agreement. These initial contributions shall be due 45 days after the Executive Director calls for them.

2. The Executive Director may at any time call for contributions provided that the Buffer Stock Manager has certified that the Buffer Stock Account may require such funds in the next four months.

3. When a contribution is called, it shall be due from members within 30 days of the date of notification. If requested by any member or members accounting for 200 votes in the Council, the Council shall meet in special session and may modify or disapprove the call-up based on an assessment of the need for funds to support buffer stock operations in the next three months. If the Council cannot reach a decision, contributions shall be due from members in accordance with the Executive Director's decision.

4. Contributions called up for the normal and the contingency Buffer Stock shall be valued at the lower trigger action price in effect at the time such contributions are called.

5. The call-up of contributions to the contingency Buffer Stock shall be handled as follows:

(a) At the 300,000-tonne review provided for in article 32, the Council shall:

(i) receive a statement from each member regarding the method by which it will finance its share of the contingency Buffer Stock pursuant to article 28, and

(ii) make all financial and other arrangements which may be necessary for the prompt implementation of the contingency Buffer Stock including call-up of funds if necessary.

(b) At the 400,000-tonne review provided for in article 32, the Council shall ensure that:

(i) all members have provided financing for their respective shares of the contingency Buffer Stock, and

(ii) the contingency Buffer Stock has been invoked and is fully primed for action in accordance with the terms of article 31.

Article 30

PRICE RANGE

1. There shall be established, for the operations of the Buffer Stock:

(a) a reference price,
(b) a lower intervention price,
(c) an upper intervention price,
(d) a lower trigger action price,
(e) an upper trigger action price,
(f) a lower indicative price, and
(g) an upper indicative price.

2. The reference price shall, on the entry into force of this Agreement, be initially fixed at 210 Malaysian/Singapore cents per kilogramme. It shall be reviewed and revised in accordance with section A of article 32.

3. There shall be an upper intervention price and a lower intervention price calculated respectively at plus and minus 15 percent of the reference price unless the Council, by special vote, decides otherwise.

4. There shall be an upper trigger action price and a lower trigger action price calculated respectively at plus and minus 20 percent of the reference price unless the Council, by special vote, decides otherwise.

5. The prices calculated in paragraphs 3 and 4 of this article shall be rounded to the nearest cent.

6. Except as otherwise provided for in this Agreement, the lower indicative price shall be 150 Malaysian/Singapore cents per kilogramme, and the upper indicative price shall be 270 Malaysian/ Singapore cents per kilogramme, for the first 30 months after the entry into force of this Agreement.

Article 31

OPERATION OF THE BUFFER STOCK

1. If, in relation to the price range provided for in article 30, or as subsequently revised in accordance with the provisions of articles 32 and 40, the market indicator price provided for in article 33 is:

(a) at or above the upper trigger action price, the Buffer Stock Manager shall defend the upper trigger action price by offering natural rubber for sale until the market indicator price falls below the upper trigger action price;

(b) above the upper intervention price, the Buffer Stock Manager may sell natural rubber in defense of the upper trigger action price;

(c) at the upper or lower intervention price, or between them, the Buffer Stock Manager shall neither buy nor sell natural rubber, except in order to carry out his responsibilities for rotation under article 36;

(d) below the lower intervention price, the Buffer Stock Manager may buy natural rubber in defense of the lower trigger action price;

(e) at or below the lower trigger action price, the Buffer Stock Manager shall defend the lower trigger action price by offering to buy natural rubber until the market indicator price exceeds the lower trigger action price.

2. When sales or purchases for the Buffer Stock reach the 400,000-tonne level, the Council shall, by special vote, decide whether to bring the contingency Buffer Stock into operation at:

(a) the lower or upper trigger action price, or

(b) any price between the lower trigger action price and the lower indicative price, or the upper trigger action price and the upper indicative price.

3. Unless the Council, by special vote, decides otherwise under paragraph 2 of this article, the Buffer Stock Manager shall use the contingency Buffer Stock to defend the lower indicative price by bringing the contingency Buffer Stock into operation when the market indicator price is at a level midway between the lower indicative price and

the lower trigger action price, and to defend the upper indicative price by bringing the contingency Buffer Stock into operation when the market indicator price is at a level midway between the upper indicative price and the upper trigger action price.

4. The total facilities of the Buffer Stock, including the normal Buffer Stock and the contingency Buffer Stock, shall be fully utilized to ensure that the market indicator price does not fall below the lower indicative price or rise above the upper indicative price.

5. Sales and purchases by the Buffer Stock Manager shall be effected through established commercial markets at prevailing prices, and all his transactions shall be in physical rubber for delivery not later than three calendar months forward.

6. To facilitate the operation of the Buffer Stock, the Council shall establish branch offices and such facilities of the Buffer Stock Managers office, where necessary, in established rubber markets and approved warehouse locations.

7. The Buffer Stock Manager shall prepare a monthly report on buffer stock transactions and the Buffer Stock Account's financial position. Sixty days after the end each month, the report for that month shall be made available to members.

8. The information on buffer stock transactions shall include quantities, prices, types, grades and markets of all buffer stock operations, including rotations effected. The information on the Buffer Stock Account's financial position shall also include interest rates on and terms and conditions of deposits and loans, the currencies operated in and other relevant information on the items referred to in paragraph 2 of article 22.

Article 32

REVIEW AND REVISION OF THE PRICE RANGE

A. Reference price

1. Review and revision of the reference price shall be based on market trends and/or net changes in the Buffer Stock, subject to the provisions of this section of this article. The reference price shall be reviewed by the Council every 18 months after the entry into force of this Agreement.

(a) If the average of the daily market indicator prices over the six-month period prior to a review is at the upper intervention price, at the lower intervention price or between these two prices, no revision of the reference price shall take place.

(b) If the average of the daily market indicator prices over the six-month period prior to a review is below the lower intervention price, the reference price shall be automatically revised downwards by 5 per cent of its level at the time of the review, unless the Council, by special vote, decides on a different percentage adjustment downwards of the reference price.

(c) If the average of the daily market indicator prices over the six-month period prior to a review is above the upper intervention price, the reference price shall be automatically revised upwards by 5 per cent of its level at the time of the review, unless the Council, by special vote, decides on a different percentage adjustment upwards of the reference price.

2. Following a net change in the Buffer Stock of 100,000 tonnes since the last assessment under this paragraph or the entry into force of this Agreement, the Executive Director shall convene a special session of the Council to assess the situation. The Council may, by special vote, decide to take appropriate measures which may include:

(a) suspension of buffer stock operations;

(b) change in the rate of buffer stock purchases or sales; and

(c) revision of the reference price.

3. If net buffer stock purchases or sales amounting to 300,000 tonnes have taken place since (a) the entry into force of this Agreement, (b) the last revision under this paragraph, or (c) the last revision under paragraph 2 of this article, whichever is most recent, the reference price shall be lowered or raised, respectively, by 3 per cent of its current level unless the Council, by special vote, decides to lower or raise it, respectively, by a different percentage amount.

4. Any adjustments of the reference price for any reason shall not be such as to allow the trigger action prices to breach the lower or upper indicative prices.

B. Indicative prices

5. The Council may, by special vote, revise the lower and upper indictive prices at reviews provided for in this section of this article.

6. The Council shall ensure that any revision of indicative prices is consistent with evolving market trends and conditions. In this connexion, the Council shall take into consideration the trend of natural rubber prices, consumption, supply, production costs and stocks, as well as the quantity of natural rubber held in the Buffer Stock and the financial position of the Buffer Stock Account.

7. The lower and upper indicative prices shall be reviewed:

(a) every 30 months after the entry into force of this Agreement;

(b) in exceptional circumstances, at the request of a member or members accounting for 200 or more votes in the Council; and

(c) when the reference price has been revised (i) downwards since the last revision of the lower indicative price or the entry into force of this Agreement, or (ii) upwards since the last revision of the upper indicative price or the entry into force of this Agreement, by at least 3 per cent under paragraph 3 of this article and at least 5 per cent under paragraph 1 of this article, or by at least this amount under paragraphs 1, 2 and/or 3 of this article, provided that the average of the daily market indicator price for the 60 days subsequent to the last revision of the reference price is either below the lower intervention price or above the upper intervention price, respectively.

8. Notwithstanding paragraphs 5, 6 and 7 of this article, there shall be no upward revision in the lower or upper indicative price if the average of the daily market indicator prices over the six-month period prior to a review of the price range under this article is below the reference price. Similarly, there shall be no downward revision in the lower or upper indicative price if the average of the daily market indicator prices over the six-month period prior to a review of the price range under this article is above the reference price.

Article 33

MARKET INDICATOR PRICE

1. There shall be established a daily market indicator price which shall be a composite, weighted average—reflecting the market in natural rubber—of daily official current-month prices on the Kuala Lumpur, London, New York and Singapore markets. Initially, the daily market indicator price shall comprise RSS 1, RSS 3 and TSR 20 and their weighting shall be equal. All quotations shall be converted into f.o.b. Malaysian/Singapore ports in Malaysian/Singapore currency.

2. The type/grade composition weightings and method of computing the daily market indicator price shall be reviewed and may, by special vote, be revised by the Council to ensure that it reflects the market in natural rubber.

3. The market indicator price shall be deemed above, at or below price levels specified in this Agreement if the average of the daily market indicator prices for the last five market days is above, at or below such price levels.

Article 34

COMPOSITION OF BUFFER STOCKS

1. At its first session after the entry into force of this Agreement, the Council shall name the internationally recognized standard grades and types of ribbed smoked sheets and technically specified rubbers for inclusion in the Buffer Stock, provided that the following criteria are met:

(a) the lowest grade and type of natural rubber authorized for inclusion in the Buffer Stock shall be RSS 3 and TSR 20; and

(b) all grades and types allowed under subparagraph (a) of this paragraph which account for at least 3 per cent of the previous calendar year's international trade in natural rubber shall be named.

2. The Council may, by special vote, change these criteria and/or selected types/grades, if necessary to ensure that the composition of the Buffer Stock reflects the evolving market situation, attainment of the stabilization objectives of this Agreement and the need to maintain a high commercial standard of quality of buffer stocks.

3. The Buffer Stock Manager should attempt to ensure that the composition of the Buffer Stock reflects export/import patterns of natural rubber, while promoting the stabilization objectives of this Agreement.

4. The Council may, by special vote, direct the Buffer Stock Manager to change the composition of the Buffer Stock if the objective of price stabilization so dictates.

Article 35

LOCATION OF BUFFER STOCKS

1. The location of buffer stocks shall ensure economic and efficient commercial operations. In accordance with this principle, the buffer stocks shall be located in the territory of both exporting and importing members. The distribution of the buffer stocks among the members

shall be effected in such a way as to attain the stabilization objectives of this Agreement while minimizing costs.

2. In order to maintain high commercial quality standards, buffer stocks shall be stored only in warehouses approved on the basis of criteria to be decided by the Council.

3. After the entry into force of this Agreement, the Council shall establish and approve a list of warehouses and the necessary arrangements for their use. The Council shall review this list periodically.

4. The Council shall also periodically review the location of the buffer stocks and may, by special vote, direct the Buffer Stock Manager to change the location of the buffer stocks to ensure economic and efficient commercial operations.

Article 36

ROTATION OF BUFFER STOCKS

The Buffer Stock Manager shall ensure that all buffer stocks are purchased and maintained at a high commercial standard of quality. He shall rotate natural rubber stored in the Buffer Stock as necessary to ensure such standards, taking into appropriate consideration the cost of such rotation and its impact on the stability of the market. The costs of rotation shall be brought into the Buffer Stock Account.

Article 37

RESTRICTION OR SUSPENSION OF BUFFER STOCK OPERATIONS

1. Notwithstanding the provisions of article 31, the Council, if in session, may, by special vote, restrict or suspend the operations of the Buffer Stock, if in its opinion the discharge of the obligations laid upon the Buffer Stock Manager by that article will not achieve the objectives of this Agreement.

2. If the Council is not in session, the Executive Director may, after consultation with the Chairman, restrict or suspend operations of the Buffer Stock, if in his opinion the discharge of the obligations laid upon the Buffer Stock Manager by article 31 will not achieve the objectives of this Agreement.

3. Immediately after a decision to restrict or suspend operations of the Buffer Stock under paragraph 2 of this article, the Executive Director shall convene a session of the Council to review such decision. Notwithstanding the provisions of paragraph 4 of article 14, the Council shall meet within seven days after the date of restriction or suspension and shall, by special vote, confirm or cancel such restriction or suspension. If the Council cannot come to a decision at that session, buffer stock operations shall be resumed without any restriction imposed under this article.

Article 38

PENALTIES RELATING TO CONTRIBUTIONS TO THE BUFFER STOCK ACCOUNT

1. If a member does not fulfill its obligation to contribute to the Buffer Stock Account by the date such contribution becomes due, it shall be considered to be in arrears. A member in arrears for 60 days

or more shall not count as a member for the purpose of voting on matters covered in paragraph 2 of this article.

2. The voting and other rights in the Council of a member in arrears for 60 days or more under paragraph 1 of this article shall be suspended, unless the Council, by special vote, decides otherwise.

3. A member in arrears shall bear interest charges at the prime rate in the host country beginning on the day such payments become due, unless these arrears are met by borrowing by the Council under article 8, in which case that member in arrears shall bear the interests costs associated with such borrowing. Coverage of arrears by the remaining importing and exporting members shall be on a voluntary basis.

4. When the default has been remedied to the satisfaction of the Council, the voting and other rights of the member in arrears for 60 days or more shall be restored. If the arrears have been made good by other members, these members shall be fully reimbursed.

Article 39

ADJUSTMENTS OF CONTRIBUTIONS TO THE BUFFER STOCK ACCOUNT

1. When the votes are redistributed at the first session in each financial year the Council shall make the necessary adjustment of each member's contribution to the Buffer Stock Account in accordance with the provisions of this article. For this purpose, the Executive Director shall determine:

(a) the net contribution of each member, by subtracting refunds of contributions to that member in accordance with paragraph 2 of this article from the sum of all contributions made by that member since the entry into force of this Agreement;

(b) total net contributions, by summing the net contributions of all members; and

(c) the revised net contribution for each member, by apportioning the total net contributions among members on the basis of each member's revised voting share in the Council pursuant to article 15, subject to paragraph 3 of article 28, provided that the voting share of each member shall, for the purpose of this article, be calculated without regard to the suspension of any member's voting rights or any redistribution of votes resulting therefrom.

Where a member's net contribution exceeds its revised net contribution, a refund of the difference shall be made to that member from the Buffer Stock Account. Where a member's revised net contribution exceeds its net contribution, a payment of the difference shall be made by that member to the Buffer Stock Account.

2. If the Council, having regard to paragraphs 2 and 3 of article 29, decides that there are net contributions in excess of funds required to support buffer stock operations within the next four months, the Council shall refund such excess net contributions less initial contributions unless it decides, by special vote, either to make no such refund or to refund a smaller amount. Members' shares of the amount to be refunded shall be in proportion to their net cash contributions.

3. At the request of a member, the refund to which it is entitled may be retained in the Buffer Stock Account. If a member requests that its

refund be retained in the Buffer Stock Account, this amount shall be credited against any additional contribution requested in accordance with article 29.

4. The Executive Director shall immediately notify members of any required payments or refunds resulting from adjustments made in accordance with paragraphs 1 and 2 of this article. Such payments by members or refunds to members shall be made within 60 days from the date the Executive Director issues such notification.

5. In the event that the amount of cash in the Buffer Stock Account, after repayment of borrowing, if any, exceeds the value of total net contributions paid by members, such surplus funds shall be distributed upon termination of this Agreement.

Article 40

THE BUFFER STOCK AND CHANGES IN EXCHANGE RATES

1. In the event that the exchange rate between the Malaysian ringgit/Singapore dollar and the currencies of the major natural rubber exporting and importing members changes to the extent that the operations of the Buffer Stock are significantly affected, the Executive Director shall, in accordance with article 37, or members may, in accordance with article 14, call for a special session of the Council. The Council shall meet within 10 days to confirm or cancel measures already taken by the Executive Director pursuant to article 37, and may, by special vote, decide to take appropriate measures, including the possibility of revising the price range, pursuant to the principles of the first sentences of paragraphs 1 and 6 of article 32.

2. The Council shall, by special vote, establish a procedure to determine a significant change in the parities of these currencies for the sole purpose of ensuring the timely convening of the Council.

3. In the event that there is a divergency between the Malaysian ringgit and the Singapore dollar to the extent that buffer stock operations are significantly affected, the Council shall meet to review the situation and may consider the adoption of a single currency.

Article 41

LIQUIDATION PROCEDURES FOR THE BUFFER STOCK ACCOUNT

1. On termination of this Agreement, the Buffer Stock Manager shall estimate the total expense of liquidating or transferring to a new international natural rubber agreement the assets of the Buffer Stock Account in accordance with the provisions of this article, and shall reserve that amount in a separate account. If these balances are inadequate, the Buffer Stock Manager shall sell a sufficient quantity of natural rubber in the Buffer Stock to provide the additional sum required.

2. Each member's share in the Buffer Stock Account shall be calculated as follows:

(a) the value of the Buffer Stock shall be the value of the total quantity of natural rubber of each type/grade therein, calculated at the lowest of the current prices of the respective types/grades on markets referred to in article 33 during the 30 market days preceding the date of termination of this Agreement;

(b) the value of the Buffer Stock Account shall be the value of the Buffer Stock plus the cash assets of the Buffer Stock Account on the date of the termination of this Agreement less any amount reserved under paragraph 1 of this article;

(c) each member's net contribution shall be the sum of its contributions throughout the duration of this Agreement less all refunds made under article 39;

(d) if the value of the Buffer Stock Account is either greater or less than total net contributions, the surplus or deficit, as the case may be, shall be allocated among members in proportion to each member's time-weighted net contribution share under this Agreement;

(e) each member's share in the Buffer Stock Account shall comprise its net contribution, reduced or increased by its shares in deficits or surpluses in the Buffer Stock Account, and reduced by its share of liability, if any, for outstanding loans drawn by the Council on that member's behalf.

3. If this Agreement is to be immediately replaced with a new international natural rubber agreement, the Council shall, by special vote, adopt procedures to ensure efficient transfer to the new agreement, as required by that agreement, of shores in the Buffer Stock Account of members which intend to participate in the new agreement. Any member which does not wish to participate in the new agreement shall be entitled to the payment of its share:

(a) from available cash in proportion to its percentage share of the total net contributions to the Buffer Stock Account, within two months; and

(b) from the net proceeds from the disposal of the buffer stocks, by way of orderly sales or by way of transfer to the new international natural rubber agreement at current market prices, which must be concluded within 12 months;

unless the Council decides, by special vote, to incease payments under subparagraph (a) of this paragraph.

4. If this Agreement terminates without being replaced by a new international natural rubber agreement which provides for a buffer stock, the Council shall, by special vote, adopt procedures to govern orderly disposal of the Buffer Stock within the maximum period specified in paragraph 7 of article 67, subject to the following constraints:

(a) no further purchases of natural rubber shall be made;

(b) the Organization shall incur no new expenses except those necessary to dispose of the Buffer Stock.

5. Subject to an election by any member to take natural rubber in accordance with paragraph 6 of this article, any cash which remains in the Buffer Stock Account shall be forthwith distributed to members in proportion to their shares as determined in paragraph 2 of this article.

6. In lieu of all or part of a cash payment, each member may elect to take its share in the assets of the Buffer Stock Account in natural rubber, subject to procedures adopted by the Council.

7. The Council shall adopt appropriate procedures for adjustment and payment of members' shares in the Buffer Stock Account. This adjustment shall account for:

(a) any discrepancy between the price of natural rubber specified in subparagraph (a) of paragraph 2 of this article and the prices at which part or all of the Buffer Stock is sold pursuant to procedures for disposal of the Buffer Stock; and

(b) the difference between estimated and actual liquidation expenses.

8. The Council shall, within 30 days following final transactions of the Buffer Stock Account, meet to effect final settlement of accounts among members within 30 days thereafter.

CHAPTER IX—RELATIONSHIP WITH THE COMMON FUND

Article 42

RELATIONSHIP WITH THE COMMON FUND

When the Common Fund becomes operational, the Council shall take full advantage of the facilities of the Common Fund according to the principles set out therein. The Council shall for this purpose negotiate with the Common Fund mutually acceptable terms and modalities for an association agreement to be signed with the Common Fund.

CHAPTER X—SUPPLY MEASURES

Article 43

SUPPLY AVAILABILITY

1. Exporting members to the fullest extent possible undertake to pursue policies and programmes which ensure continuous availability to consumers of natural rubber supplies.

2. Exporting members shall continue to seek to upgrade natural rubber and to achieve uniformity in quality specifications and presentation of natural rubber, in accordance with technological and market developments.

3. In the event of a potential shortage of natural rubber developing, the Council may make recommendations to relevant members on possible appropriate steps to ensure as rapid an increase as possible in natural rubber supplies.

Article 44

OTHER MEASURES

1. With a view to achieving the objectives of this Agreement, the Council shall identify and propose appropriate measures and techniques directed towards promoting the development of the natural rubber economy by producing members through expanded and improved production, productivity and marketing, thereby increasing the export earnings of producing members while at the same time improving the reliability of supply.

2. For this purpose, the Committee on Other Measures shall undertake economic and technical analyses in order to identify:

(a) natural rubber research and development programmes and projects of benefit to exporting and importing members, including scientific research in specific areas;

(b) programmes and projects to improve the productivity of the natural rubber industry;

(c) ways and means to upgrade natural rubber supplies and achieve uniformity in quality specification and presentation of natural rubber; and

(d) methods of improving the processing, marketing and distribution of raw natural rubber.

3. The Council shall consider the financial implications of such measures and techniques and seek to promote and facilitate the provision of adequate financial resources, as appropriate, from such sources as international financial institutions and the Second Account of the Common Fund when established.

4. The Council may make recommendations, as appropriate, to members, international institutions and other organizations to promote the implementation of specific measures under this article.

5. The Committee on Other Measures shall periodically review the progress of those measures which the Council decides to promote and recommend, and shall report thereon to the Council.

CHAPTER XI—CONSULTATION ON DOMESTIC POLICIES

Article 45

CONSULTATION

The Council shall consult, at the request of any member, on government natural rubber policies directly affecting supply or demand. The Council may submit its recommendations to members for their consideration.

CHAPTER XII—STATISTICS, STUDIES AND INFORMATION

Article 46

STATISTICS AND INFORMATION

1. The Council shall collect, collate and as necessary publish such statistical information on natural rubber and related areas as is necessary for the satisfactory operation of this Agreement.

2. Members shall promptly and to the fullest extent possible furnish to the Council available data concerning production, consumption and international trade in natural rubber by specific grades.

3. The Council may also request members to furnish other information, including information on related areas, which may be required for the satisfactory operation of this Agreement.

4. Members shall furnish all the above-mentioned statistics and information within a reasonable time to the fullest extent possible not inconsistent with their national legislation.

5. The Council shall establish close relationship with appropriate international organizations, including the International Rubber Study Group, and with commodity exchanges in order to help ensure the availability of recent and reliable data on production, consumption, stocks, international trade and prices of natural rubber, and other factors that influence demand and supply of natural rubber.

6. The Council shall endeavour to ensure that no information published shall prejudice the confidentiality of the operations of persons or companies producing, processing or marketing natural rubber or related products.

Article 47

ANNUAL ASSESSMENT, ESTIMATES AND STUDIES

1. The Council shall prepare and publish an annual assessment on the world natural rubber situation and related areas in the light of the information supplied by members and from all relevant intergovernmental and international organizations.

2. At least once in every half year, the Council shall also estimate production, consumption, exports and imports of natural rubber of all types and grades for the following six months. It shall inform the members of these estimates.

3. The Council shall undertake, or make appropriate arrangements to undertake, studies of trends in natural rubber production, consumption, trade, marketing and prices, as well as of the short-term and long-term problems of the world natural rubber economy.

Article 48

ANNUAL REVIEW

1. The Council shall annually review the operation of this Agreement in the light of the objectives set out in article 1. It shall inform nembers of the results of the review.

2. The Council may then formulate recommendations to members, nd thereafter take measures within its competence to improve the ffectiveness of the operation of this Agreement.

CHAPTER XIII—MISCELLANEOUS

Article 49

GENERAL OBLIGATIONS OF MEMBERS

1. Members shall for the duration of this Agreement use their best ndeavors and co-operate to promote the attainment of the objectives f this Agreement and shall not take any action in contradiction to iose objectives.

2. Members shall in particular seek to improve the conditions of ie natural rubber economy and to encourage the production and use f natural rubber in order to promote the growth and the modernization of the natural rubber economy for the mutual benefit of producers d consumers.

3. Members shall accept as binding all decisions of the Council under this Agreement and will not implement measures which would have the effect of limiting or running counter to those decisions.

Article 50

OBSTACLES TO TRADE

1. The Council shall, in accordance with the annual assessment of the world natural rubber situation referred to in article 47, identify any obstacles to the expansion of trade in natural rubber in its raw, semi-processed or modified forms.

2. The Council may, in order to further the purposes of this article, make recommendations to members to seek in appropriate international fora mutually acceptable practical measures designed to remove progressively, and where possible eliminate, such obstacles. The Council shall periodically examine the results of such recommendations.

Article 51

TRANSPORTATION AND MARKET STRUCTURE OF NATURAL RUBBER

The Council should encourage and facilitate the promotion of reasonable and equitable freight rates and improvements in the transport system, so as to provide regular supplies to markets and to effect savings in the cost of the products marketed.

Article 52

DIFFERENTIAL AND REMEDIAL MEASURES

Developing importing members, and least developed countries which are members, whose interests are adversely affected by measures taken under this Agreement may apply to the Council for appropriate differential and remedial measures. The Council shall consider taking such appropriate measures in accordance with paragraphs 3 and 4 of section III of resolution 93 (IV) of the United Nations Conference on Trade and Development.

Article 53

RELIEF FROM OBLIGATIONS

1. Where it is necessary on account of exceptional circumstances or emergency or *force majeure* not expressly provided for in this Agreement, the Council may, by special vote, relieve a member of an obligation under this Agreement if it is satisfied by an explanation from that member regarding the reasons why the obligation cannot be met.

2. The Council, in granting relief to a member under paragraph 1 of this article, shall state explicitly the terms and conditions on which, and the period for which, the member is relieved of such obligation, and the reasons for which the relief is granted.

Article 54

FAIR LABOUR STANDARDS

Members declare that they will endeavor to maintain labour standards designed to improve the levels of living of labour in their respective natural rubber sectors.

CHAPTER XIV—COMPLAINTS AND DISPUTES

Article 55

COMPLAINTS

1. Any complaint that a member has failed to fulfill its obligations under this Agreement shall, at the request of the member making the complaint, be referred to the Council, which, subject to prior consultation with the members concerned, shall take a decision on the matter.

2. Any decision by the Council that a member is in breach of its obligations under this Agreement shall specify the nature of the breach.

3. Whenever the Council, whether as the result of a complaint or otherwise, finds that a member has committed a breach of this Agreement, it may, by special vote, and without prejudice to such other measures as are specifically provided for in other articles of this Agreement:

(a) Suspend that member's voting rights in the Council and, if it deems necessary, suspend any other rights of such member, including that of holding office in the Council or in any committee established under article 19, and of being eligible for membership of such committees, until it has fulfilled its obligations; or

(b) Take action under article 65, if such breach significantly impairs the operation of this Agreement.

Article 56

DISPUTES

1. Any dispute concerning the interpretation or application of this Agreement which is not settled among the members involved shall, at the request of any member party to the dispute, be referred to the Council for decision.

2. In any case where a dispute has been referred to the Council under paragraph 1 of this article, a majority of members holding at least one third of the total votes may require the Council, after discussion, to seek the opinion of an advisory panel constituted under paragraph 3 of this article on the issue in dispute before giving its decision.

3. (a) Unless the Council, by special vote, decides otherwise, the advisory panel shall consist of five persons as follows:

(i) two persons, one having wide experience in matters of the kind in dispute and the other having legal standing and experience, nominated by the exporting members;

(ii) two such persons nominated by the importing members; and

(iii) a chairman selected unanimously by the four persons nominated under (i) and (ii) of this subparagraph or, if they fail to agree, by the Chairman of the Council.

(b) Nationals of members and of non-members shall be eligible to serve on the advisory panel.

(c) Persons appointed to the advisory panel shall act in their personal capacities and without instructions from any government.

(d) The expenses of the advisory panel shall be paid by the Organization.

4. The opinion of the advisory panel and the reasons therefor shall be submitted to the Council which, after considering all the relevant information, shall, by special vote, decide the dispute.

CHAPTER XV—FINAL PROVISIONS

Article 57

SIGNATURE

This Agreement shall be open for signature at United Nations Headquarters from 2 January to 30 June 1980 inclusive by the Governments invited to the United Nations Conference on Natural Rubber, 1978.

Article 58

DEPOSITARY

The Secretary-General of the United Nations is hereby designated as the depositary of this Agreement.

Article 59

RATIFICATION, ACCEPTANCE, AND APPROVAL

1. This Agreement shall be subject to ratification, acceptance or approval by the signatory Governments in accordance with their respective constitutional or institutional procedures.

2. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 September 1980. The Council may, however, grant extensions of time to signatory Governments which have been unable to deposit their instruments by that date.

3. Each Government depositing an instrument of ratification, acceptance or approval shall, at the time of such deposit, declare itself to be an exporting member or an importing member.

Article 60

NOTIFICATION OF PROVISIONAL APPLICATION

1. A signatory Government which intends to ratify, accept or approve this Agreement, or a Government for which the Council has established conditions for accession but which has not yet been able

to deposit its instrument, may at any time notify the depositary that it will fully apply this Agreement provisionally, either when it enters into force in accordance with article 61, or if it is already in force, at a specified date.

2. Notwithstanding the provisions of paragraph 1 of this article, a Government may provide in its notification of provisional application that it will apply this Agreement only within the limitations of its constitutional and/or legislative procedures. However, such Government shall meet all its financial obligations pertaining to the Administrative Account. The provisional membership of a Government which notifies in this manner shall not exceed 18 months from the provisional entry into force of this Agreement. In case of the need for a call-up of funds for the Buffer Stock Account within the 18-month period, the Council shall decide on the status of a Government holding provisional membership under this paragraph.

Article 61

ENTRY INTO FORCE

1. This Agreement shall enter into force definitively on 1 October 1980 or on any date thereafter, if by that date Governments accounting for at least 80 per cent of net exports as set out in annex A to this Agreement, and Governments accounting for at least 80 per cent of net imports as set out in annex B to this Agreement have deposited their instruments of ratifiaction, acceptance, approval or accession, or have assumed full financial commitment to this Agreement.

2. This Agreement shall enter into force provisionally on 1 October 1980, or on any date within two years thereafter, if by that date Governments accounting for at least 65 per cent of net exports as set out in annex A to this Agreement, and Governments accounting for at least 65 per cent of net imports as set out in annex B to this Agreement, have deposited their instruments of ratification, acceptance or approval, or have notified the depository under article 60 that they will apply this Agreement provisionally. The Agreement shall remain in force provisionally up to a maximum of 18 months, unless it enters into force definitively under paragraph 1 of this article or the Council decides otherwise in accordance with paragraph 4 of this article.

3. If this Agreement does not come into force provisionally under paragraph 2 of this article within two years from 1 October 1980, the Secretary-General of the United Nations shall invite, at the earliest time he considers practicable after that date, the Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified him that they will apply this Agreement provisionally, and all others which participated in the United Nations Conference on Natural Rubber, 1978, to meet with a view to recommending whether or not those Governments in a position to do so should take the necessary steps to put this Agreement provisionally or definitively into force among themselves in whole or in part. If no conclusion is reached at this meeting, the Secretary-General may convene such further meetings as he considers appropriate.

4. If the requirements for definitive entry into force of this Agreement under paragraph 1 of this Article have not been met within 18 calendar months of the Agreement's provisional entry into force under paragraph 2 of this article, the Secretary-General of the United Nations shall, at the earliest time he considers practicable, but before the end of the 18-month period mentioned above, convene those Governments which have deposited instruments of ratification, acceptance, approval or accession, or have notified him that they will apply this Agreement provisionally, and all others which participated in the United Nations Conference on Natural Rubber, 1978, to meet to review the future of this Agreement. Taking into account the recommendations of the meeting convened by the Secretary-General of the United Nations, the Council shall meet to decide the future of this Agreement. The Council shall, by special vote, then decide:

(a) to put this Agreement definitely into force among the current members in whole or in part;

(b) to keep this Agreement provisionally in force among the current members in whole or in part for an additional year; or

(c) to renegotiate this Agreement.

If no decision is reached by the Council, this Agreement shall terminate at the expiry of the 18-month period.

5. For any Government that deposits its instrument of ratification, acceptance, approval or accession after the entry into force of this Agreement, it shall enter into force for that Government on the date of such deposit.

6. The Secretary-General of the United Nations shall convene the first session of the Council as soon as possible after the entry into force of this Agreement.

Article 62

ACCESSION

1. This Agreement shall be open for accession by the Governments of all States upon conditions established by the Council, which shall include a time limit for the deposit of instruments of accession. The Council may, however, grant extensions of time to Governments which are unable to deposit their instruments of accession by the time limit set in the conditions of accession.

2. Accession shall be effected by the deposit of an instrument of accession with the depositary.

Article 63

AMENDMENTS

1. The Council may, by special vote, recommend amendments of this Agreement to the members.

2. The Council shall fix a date by which members shall notify the depositary of their acceptance of the amendment.

3. An amendment shall enter into force 90 days after the depositary has received notifications of acceptance from members constituting at least two thirds of the exporting members and accounting for at least 85 per cent of the votes of the exporting members, and from members

constituting at least two-thirds of the importing members and accounting for at least 85 per cent of the votes of the importing members.

4. After the depositary informs the Council that the requirements for entry into force of the amendment have been met, and notwithstanding the provisions of paragraph 2 of this article relating to the date fixed by the Council, a member may still notify the depositary of its acceptance of the amendment, provided that such notification is made before the entry into force of the amendment.

5. Any member which has not notified its acceptance of an amendment by the date on which such amendment enters into force shall cease to be a contracting party as from that date, unless such member has satisfied the Council that its acceptance could not be obtained in time owing to difficulties in completing its constitutional or institutional procedures, and the Council decides to extend for that member the period for acceptance of the amendment. Such member shall not be bound by the amendment before it has notified its acceptance thereof.

6. If the requirements for the entry into force of the amendment have not been met by the date fixed by the Council in accordance with paragraph 2 of this article, the amendment shall be considered withdrawn.

Article 64

WITHDRAWAL

1. A member may withdraw from this Agreement at any time after the entry into force of this Agreement by giving notice of withdrawal to the depositary. That member shall simultaneously inform the Council of the action it has taken.

2. One year after its notice is received by the depository, that member shall cease to be a contracting party to this Agreement.

Article 65

EXCLUSION

If the Council decides that any member is in breach of its obligations under this Agreement and decides further that such breach significantly impairs the operation of this Agreement, it may, by special vote, exclude that member from this Agreement. The Council shall immediately so notify the depositary. One year after the date of the Council's decision, that member shall cease to be a contracting party to this Agreement.

Article 66

SETTLEMENT OF ACCOUNTS WITH WITHDRAWING OR EXCLUDED MEMBERS OF MEMBERS UNABLE TO ACCEPT AN AMENDMENT

1. In accordance with this article, the Council shall determine any settlement of accounts with a member which ceases to be a contracting party to this Agreement owing to:

(a) non-acceptance of an amendment to this Agreement pursuant to article 63;

(b) withdrawal from this Agreement pursuant to article 64
or

(c) exclusion from this Agreement pursuant to article 65.

2. The Council shall retain any contribution paid to the Adminis
trative Account by a member which ceases to be a contracting part
to this Agreement.

3. The Council shall refund the share in the Buffer Stock Accoun
in accordance with article 41 to a member which ceases to be a con
tracting party owing to non-acceptance of an amendment to thi
Agreement, withdrawal or exclusion, less its share of any surpluse

(a) Such refund to a member which ceases to be a contractin
party owing to non-acceptance of an amendment to this Agre
ment shall be made one year after the amendment enters int
force.

(b) Such refund to a member which withdraws shall be mad
within 60 days after that member ceases to be a contracting part
to this Agreement, unless as a result of this withdrawal the Coun
cil decides to terminate this Agreement under paragraph 6
article 67 prior to such a refund, in which case the provisions
article 41 and paragraph 7 of article 67 shall apply.

(c) Such refund to a member which is excluded shall be mad
within 60 days after a member ceases to be a contracting party
this Agreement.

4. In the event that the Buffer Stock Account is unable to settle th
payment in cash due under subparagraph (a), (b) or (c) of paragrap
3 of this article without either undermining the viability of the Buff
Stock Account or leading to a call-up of additional contributions fro
members to cover such refunds, payment shall be deferred until t
requisite amount of natural rubber in the Buffer Stock can be sold at
above the upper intervention price. In the event that, before the e
of the one-year period specified in article 64, the Council informs
withdrawing member that payment will have to be deferred in accor
ance with this paragraph, the period of one year between notificati
of intention to withdraw and the actual withdrawal may, if the wit
drawing member so wishes, be extended until such time as the Coun
informs that member that payment of its share can be effected with
60 days.

5. A member which has received an appropriate refund under th
article shall not be entitled to any share of the proceeds of liquidati
of the Organization. Nor shall such a member be liable for any defi
incurred by the Organization after such refund has been made.

Article 67

DURATION, EXTENSION AND TERMINATION

1. This Agreement shall remain in force for a period of five ye
after its entry into force, unless extended under paragraph 2, 3 o
of this article or terminated under paragraph 5 or 6 thereof.

2. Before the expiry of the five-year period referred to in paragra
1 of this article, the Council may, by special vote, decide to extend t

Agreement for a period not exceeding two years and/or to renegotiate it. The Council shall notify the depositary of any such decisions.

3. If, before the expiry of the five-year period referred to in paragraph 1 of this article, negotiations for a new agreement to replace this Agreement have not yet been concluded, the Council may, by special vote, extend this Agreement for a period not exceeding two years. The Council shall notify the depositary of any such extension.

4. If, before the expiry of the five-year period referred to in paragraph 1 of this article, a new agreement to replace this Agreement has been negotiated but has not yet entered into force either definitively or provisionally, the Council may, by special vote, extend this Agreement until the provisional or definitive entry into force of the new agreement, provided that this extension shall not exceed two years. The Council shall notify the depositary of any such extension.

5. If a new international natural rubber agreement is negotiated and enters into force during any period of extension of this Agreement pursuant to paragraph 2, 3 or 4 of this article, this Agreement, as extended, shall terminate upon the entry into force of the new agreement.

6. The Council may at any time, by special vote, decide to terminate this Agreement with effect from such date as it may determine. The Council shall notify the depositary of any such decision.

7. Notwithstanding the termination of this Agreement, the Council shall continue in being for a period not exceeding three years to carry out the liquidation of the Organization, including the settlement of accounts, and the disposal of assets in accordance with the provisions of article 41 and subject to relevant decisions to be taken by special vote, and shall have during that period such powers and functions as may be necessary for these purposes.

Article 68

RESERVATIONS

Reservations may not be made with respect to any of the provisions of this Agreement.

Article 69

AUTHENTIC TEXTS OF THIS AGREEMENT

The texts of this Agreement in the Chinese, English, French, Russian and Spanish languages shall be equally authentic.

IN WITNESS WHEREOF the undersigned, having been duly authorized to this effect by their respective Governments, have signed this Agreement on the dates appearing opposite their signatures.

DONE at Geneva, this sixth day of October, one thousand nine hundred and seventy-nine.

Certified as an authentic text—

E.V. MBULI,
Secretary, United Nations,
Conference on Natural Rubber, 1978.

Annex A—*Shares of individual exporting countries in total net exports of countries participating in the United Nations Conference on Natural Rubber as established for the purposes of article 61*

	[1] Percent		[1] Percent
Bolivia	0.081	Papua-New Guinea	0.150
Cameroon	0.514	Philippines	0.018
India	0.199	Singapore	4.406
Indonesia	25.387	Sri Lanka	4.367
Liberia	2.551	Thailand	12.004
Malaysia	48.218	Zaire	0.792
Nigeria	1.313	Total	100.000

[1] Shares are percentages of total net exports of natural rubber in the 5-year period 1974 to 1978.

Annex B—*Shares of individual importing countries and groups of countries in total net imports of countries participating in the United Nations Conference on Natural Rubber as established for the purposes of article 61*

	[1] Percent		[1] Percent
Algeria	0.081	Ireland	0.273
Australia	1.467	Italy	4.150
Austria	0.683	Netherlands	0.733
Brazil	1.836	United Kingdom	5.321
Bulgaria	0.394	Iraq	0.051
Canada	2.934	Finland	0.226
China	7.707	German Democratic Republic	1.258
Czechoslovakia	1.810	Ghana	0.141
Ecuador	0.050	Guatemala	0.070
Egypt	0.097	Hungary	0.534
EEC	23.283	Japan	10.780
Belgium/Luxembourg	0.772	Madagascar	0.000
Denmark	0.171	Malta	0.000
France	5.428	Mexico	1.325
Germany, Federal Republic of	6.435		
Morocco	0.150	Syrian Arab Republic	0.014
New Zealand	0.291	Tunisia	0.008
Norway	0.094	Turkey	0.758
Panama	0.000	Union of Soviet Socialist Republics	7.148
Peru	0.225		
Poland	1.980	United States	24.756
Republic of Korea	3.189	Uruguay	0.117
Romania	1.529	Venezuela	0.306
Somalia	0.000	Yugoslavia	0.969
Spain	3.178		
Sweden	0.439	Total	100.000
Switzerland	0.122		

[1] Shares are percentages of total net imports of natural rubber in the 3-year period 1976, 1977, and 1978.

Annex C—*Cost of the buffer stock as estimated by the Chairman of the United Nations Conference on Natural Rubber, 1978*

In normal circumstances the cost of acquiring and operating a Buffer Stock of 550,000 tonnes might be calculated by multiplying this figure by the lower trigger action price of 168 Malaysian/Singapore cents per kilogramme and adding a further 10 per cent thereof.

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96th Congress
2d Session

SENATE

Executive
E

INCOME TAX TREATY WITH THE REPUBLIC OF MALTA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MALTA WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT VALLETTA ON MARCH 21, 1980

April 21, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 3) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 21, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Treaty between the United States of America and the Republic of Malta with Respect to Taxes on Income, together with a related exchange of notes, signed at Valletta on March 21, 1980. For the information of the Senate, I also transmit the report of the Department of State with respect to the Treaty.

For the most part, the Treaty follows the pattern of the United States model income tax convention, although there are some deviations from the model to accommodate Malta's status as a developing country. For example, in the Treaty, business profits of an enterprise of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. However, the definition of a permanent establishment is somewhat more broadly drawn in the Treaty than in the model convention.

The Treaty contains the usual rules relating to real property income, shipping income, capital gains, the treatment of entertainers, students, teachers, pensioners and governmental employees, and nondiscrimination and administrative cooperation.

The accompanying exchange of notes sets forth certain understandings between the two Governments.

I recommend that the Senate give early and favorable consideration to the Treaty and give advice and consent to its ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 10, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Treaty between the United States of America and the Republic of Malta with Respect to Taxes on Income, together with a related exchange of notes, signed at Valletta on March 21, 1980.

The Treaty, in general, follows the pattern of the United States model income tax convention, although there are a number of deviations from the model to accommodate Malta's status as a developing country.

In the Treaty, business profits of an enterprise of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. However, the definition of a permanent establishment is somewhat more broadly drawn in the Treaty than in the model convention. Similarly, with respect to independent personal service income, an individual who is a resident of one State may be taxed by the other on the income from personal services performed in the other State only if certain tests are met. However, the time threshold is shorter in the Treaty than in the model, and a dollar threshold is added.

Maximum rates of tax are established for the taxation by the source country of dividends, interest and royalties. With respect to dividends, the rules for United States taxation of United States source dividends are the same as in the model (15 percent in general, but 5 percent on subsidiary dividends). The rule for Maltese tax on Maltese source dividends is different, to take account that Malta's corporation and shareholder taxes are fully integrated. The Treaty provides that the tax payable to Malta on such dividends shall not exceed that chargeable on the paying company, although it may be lower, depending on the Maltese tax status of the United States shareholder.

Interest and royalties are both taxable at the source at a maximum rate of 12.5 percent, except that interest received by a Contracting State and cultural royalties are exempt at the source. As with dividends, Malta's tax may be below the specified limits, depending on the tax status in Malta of the United States income recipient.

The Treaty contains the usual rules relating to real property income, shipping income, capital gains, the treatment of entertainers, students, teachers, pensioners and government employees, nondiscrimination and administrative cooperation.

The exchange of notes sets forth certain understandings reached between the two Governments as follows:

(1) Although the United States is unable to accept the inclusion in the Treaty of additional provisions which would create incentives to promote the flow of investment to Malta, the Government of the United States would be prepared, should circumstances change, to reopen discussions with a view to including such provisions in the Treaty.

(2) Profits from the operation of a ship in international waters to which paragraph (5) of Article 8 (Shipping and Air Transport) applies shall be deemed to constitute profits to which the provisions of Article 7 (Business Profits) shall apply.

(3) The Treaty provides for a tax rate limit of 12½ percent on gross interest and gross royalties. Malta will apply the 12½ percent limitation by multiplying the total tax chargeable by a fraction having the net interest or royalty, respectively, as its numerator and the total income as its denominator. Malta will bring to charge the interest and royalty income as part of the total income of the recipient which is subject to Malta tax after allowance of expenses proved to have been incurred in the production of that income.

The Treaty will enter into force upon the exchange of instruments of ratification and its provisions will take effect in respect of income or profits arising on or after the first day of January of the year in which the Treaty enters into force.

This Treaty will be in force for at least three years and will remain in force thereafter unless terminated by one of the parties by giving at least 6 months' notice through diplomatic channels. The Treaty would cease to have effect as of January 1 following such notification.

A technical memorandum explaining the provisions of the Treaty will be prepared by the Department of the Treasury and submitted to the Senate Foreign Relations Committee.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Treaty. It has the approval of both Departments.

Respectfully submitted.

CYRUS VANCE.

AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF MALTA WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Republic of Malta desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

(1) Except as otherwise provided in this Agreement, this Agreement shall apply to persons who are residents of one or both of the Contracting States.

(2) This Agreement shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State, or

(b) by any other agreement between the Contracting States.

(3) Notwithstanding any provision of this Agreement, except paragraph (4) of this Article, a Contracting State may tax its residents (as determined under Article 4 (Fiscal Residence)), and by reason of citizenship may tax its citizens, as if this Agreement had not come into effect.

(4) The provisions of paragraph (3) shall not affect:

(a) the benefits conferred by a Contracting State under Articles 24 (Relief From Double Taxation), 25 (Non-Discrimination), and 26 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Teachers), 22 (Students and Trainees) and 28 (Diplomatic Agents and Consular Officers) upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

TAXES COVERED

(1) This Agreement shall apply to taxes on income imposed on behalf of a Contracting State.

(2) The existing taxes to which this Agreement shall apply are:

(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code and the excise tax imposed on insurance premiums paid to foreign insurers and the excise taxes with respect to private foundations;

(b) in Malta: the income tax, including prepayments of tax whether made by deduction at source or otherwise.

(3) This Agreement shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Agreement, including explanations, regulations, rulings, or judicial decisions.

(4) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Agreement. However, a company resident in Malta shall be exempt from the United States personal holding company tax in any taxable year unless 10 per cent or more in value of its stock is owned directly or indirectly, within the meaning of section 544 of the Internal Revenue Code, by one or more individuals who are residents or citizens of the United States. A company resident in Malta shall be exempt from the United States accumulated earnings tax in any taxable year unless at least 25 per cent of the voting stock of such company is owned by citizens or residents of the United States.

(5) For the purpose of Article 25 (Non-Discrimination), this Agreement shall also apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 3

GENERAL DEFINITIONS

(1) For the purpose of this Agreement, unless the context otherwise requires:

(a) the term "person" includes an individual, a partnership, a company, an estate, a trust, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(d) the term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;

(e) the term "national" means:

(i) in respect of the United States, all individuals possessing the citizenship of the United States of America and all legal persons, partnerships and association deriving their status as such from the laws in force in the United States;

(ii) in respect of Malta, any citizen of Malta as provided for in Chapter III of the Constitution of Malta and in the Maltese Citizenship Act, 1965, and any legal person, partnership or association deriving its status as such from the law in force in Malta;

(f) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Malta: the Minister responsible for finance or his authorised representative;

(g) (i) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) when used in a geographical sense, such term also includes (a) the territorial sea thereof, to the extent recognized by international law, and (b) the seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, with respect to the exploration for, and exploitation of, the natural resources of such areas, but only to the extent that the person, property or activity to which this Agreement is being applied is connected with such exploration or exploitation;

(h) (i) the term "Malta" means the Republic of Malta; and

(ii) when used in a geographical sense, the term "Malta" means the Maltese islands, and includes (a) the territorial sea thereof, to the extent recognized by international law, and (b) the seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Malta exercises sovereign rights, in accordance with international law, with respect to the exploration for, and exploitation of, the natural resources of such areas, but only to the extent that the person, property or activity to which this Agreement is being applied is connected with such exploration or exploitation;

(i) the terms "a Contracting State" and "the other Contracting State" mean the United States or Malta as the context requires.

(2) As regards the application of this Agreement by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which this Agreement applies.

ARTICLE 4

FISCAL RESIDENCE

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, but:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax as the income of a resident of that State, either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his or her status shall be determined as follows:

(a) the individual shall be deemed to be a resident of the State in which he or she has a permanent home available; if such individual has a permanent home available in both States, or in neither State, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (centre of vital interests);

(b) if the State in which the individual's centre of vital interests cannot be determined, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) a company is a resident of both Contracting States, then if it is created or organized under the laws of a Contracting State or a political subdivision thereof, it shall be treated as a resident of that State.

(4) Where by reason of the provisions of paragraph (1) a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States, shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Agreement to such person.

(5) For the purposes of this Agreement, an individual who is a national of a Contracting State shall also be deemed to be a resident of that State if (a) the individual is an employee of that State or an instrumentality thereof in the other Contracting State or in a third State; and (b) the individual is engaged in the performance of governmental functions for the first-mentioned State; and (c) the individual is subjected in the first-mentioned State to the same obligations in respect of taxes on income as are residents of the first-mentioned State. The spouse and minor children residing with the employee and subject to the requirements of (c) above shall also be deemed to be residents of the first-mentioned State.

(6) Where under any provision of this Agreement income arising in one of the Contracting States is relieved from tax in that Contracting State and, under the law in force in the other Contracting State a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the year such income accrues or the following year.

Article 5

PERMANENT ESTABLISHMENT

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop; and
(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

(3) A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration or development of natural resources, or supervisory activities connected therewith, constitutes a permanent establishment but only if such site, project or activity continues for a period or periods aggregating more than 183 days in any twelve month period (including the period of any supervisory activity connected therewith), provided that a permanent establishment shall not exist in any taxable year in which such site, project or activity continues for a period or periods aggregating less than 30 days in that taxable year.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for scientific research or for carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (e) of this paragraph.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY (REAL PROPERTY)

(1) Income derived by a resident of a Contracting State from immovable (real) property situated in the other Contracting State may be taxed in that other State.

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, whether incurred in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(6) The provisions of this Article shall not affect the provisions of the law of a Contracting State regarding the taxation of the business of insurance.

(7) Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

(8) The term "profits" as used in this Article means income derived from any trade or business whether carried on by an individual, company or any other person, or group of persons, including the rental of tangible personal (movable) property.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

(1) Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

(2) For purposes of this Article, profits from the operation in international traffic of ships or aircraft include profits derived from the rental on a full or bareboat basis of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph (1).

(3) Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

(4) The provisions of paragraphs (1) and (3) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

(5) Notwithstanding the other provisions of this Article, profits from the operation of a ship in international traffic and gains from the sale, exchange or other alienation of such a ship, derived by a corporation resident in Malta which has more than 25 percent of its voting stock owned, directly or indirectly, by persons not resident in Malta, may be taxed by the United States unless the corporation proves that the profits derived from the operation of such ship are subject to Malta tax without regard to any relief therefrom as provided for in section 86 of the Merchant Shipping Act, 1973, or in any identical or similar provision.

ARTICLE 9

ASSOCIATED ENTERPRISES

(1) Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

(3) The provisions of paragraph (1) shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons.

ARTICLE 10

DIVIDENDS

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) in the case of United States:

(i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns, directly or indirectly, at least 10 percent of the voting stock of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends in all other cases;

(b) in the case of Malta:

that chargeable on the company paying the dividends in the year during which distribution is made.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

(5) Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

(a) such dividends are paid to a resident of that other State;

(b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, or

(c) such dividends are paid out of profits attributable to one or more permanent establishments which such company had in that other State, provided that such profits constituted at least 50 per cent of such company's gross income from all sources.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph (2).

ARTICLE 11

INTEREST

(1) Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may be taxed in the Contracting State in which it arises and according to the law of that State, but the tax so charged shall not exceed 12½ per cent of the gross amount of such interest.

(3) Notwithstanding paragraphs (1) and (2), interest beneficially derived by one of the Contracting States, or by an instrumentality of that Contracting State not subject to tax by that Contracting State on its income shall be exempt from tax by the other Contracting State.

(4) The term "interest" as used in this Agreement means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(5) The provisions of paragraph (2) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or

Article 14 (Independent Personal Services), as the case may be, shall apply.

(6) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(7) Where, by reasons of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

(8) A Contracting State may not impose any tax on interest paid by a resident of the other Contracting State, except insofar as

(a) such interest arises in, or is paid to a resident of, the first-mentioned State, or

(b) the debt claim in respect of which the interest is paid is effectively connected with a permanent establishment or a fixed base situated in the first-mentioned State.

ARTICLE 12

ROYALTIES

(1) Cultural royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) Industrial royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State:

(a) may be taxed by both Contracting States, but

(b) shall not be taxed in the Contracting State in which they arise at a rate in excess of 12½ per cent of the gross amount of such royalties.

(3) For the purposes of this Article:

(a) cultural royalties are payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works;

(b) industrial royalties are payments of any kind made as consideration for:

(i) the use of, or the right to use cinematographic films or tapes for television or broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights; and

(ii) the supply of scientific, technical, industrial or commercial knowledge or information (know-how) held by the person supplying such know-how including the supply of any assistance of an ancillary and subsidiary nature supplied as a means of enabling the application or enjoyment of such know-how or any other property or right to which this article applies; and

(c) cultural royalties and industrial royalties include gains derived from the sale, exchange, or other alienation of any such property or rights to the extent that the amounts realized on such sale, exchange, or other alienation for consideration are contingent on the productivity, use, or alienation of such property or rights.

(4) The provisions of paragraphs (1) and (2)(b) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. However, where the property or rights for which the royalties are paid are used within the United States or Malta, as the case may be, the royalties shall be deemed to arise in the State in which the property or rights are used.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

CAPITAL GAINS

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income From Immovable Property (Real Property)) and situated in the other Contracting State as well gains from the alienation of shares of a company the assets of which consist, directly or indirectly, principally of such immovable property may be taxed in that other State.

(2) Gains from the alientation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose

of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State, and gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

(4) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), and (3), shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and

(a) the individual is present in that other State for a period or periods aggregating more than 90 days in the taxable year concerned, or

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in such other State, or

(c) the remuneration for his services in the other Contracting State is derived from residents of that State and exceeds ten thousand United States dollars or the equivalent during the taxable year.

(2) The term "personal services" referred to in this Article includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

(1) Subject to the provisions of Articles 17 (Directors' Fees), 19 (Pensions and Annuities) and 20 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed in that Contracting State.

ARTICLE 16

INVESTMENT OR HOLDING COMPANIES

If 25 per cent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on company business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties. For the purposes of this Article, the source of dividends, interest or royalties shall be determined in accordance with subparagraphs (a), (b) or (c) of paragraph 3 of Article 24 (Relief from Double Taxation).

ARTICLE 17

DIRECTORS' FEES

Notwithstanding Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), directors' fees derived by a resident of one of the Contracting States in his capacity as a member of the board of directors of a company of the other Contracting State (but not including fixed or contingent payments derived in his capacity as an officer or employee) may, to the extent such fees are in excess of a reasonable fixed amount payable to all directors of the company for attendance at a directors' meeting in such other Contracting State, be taxable in such other Contracting State, whether or not such director is physically present in such other Contracting State in connection with his duties as a director.

ARTICLE 18

ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as

a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his or her personal activities as such exercised in the other Contracting State, may be taxed in that other State if:—

(a) the artiste or athlete is present in that other Contracting State for a period or periods aggregating 90 days or more during the taxable year, or

(b) such income exceeds 500 United States dollars or the equivalent for each day of performance, including rehearsal, or five thousand United States dollars or the equivalent, in the taxable year.

(2) Where income in respect of activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Article 19

PENSIONS AND ANNUITIES

(1) Subject to the provisions of paragraph 2 of Article 20 (Government Service), pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

Article 20

GOVERNMENT SERVICE

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services;

provided that the provisions of clause (ii) shall not apply to the spouse or dependent children of an individual who is receiving remuneration to which the provisions of subparagraph (a) apply and who does not come within the terms of clause (i) or (ii).

(2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority therof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of that State.

(3) The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 18 (Artistes and Athletes), and 19 (Pensions and Annuities), shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

TEACHERS

(1) Remuneration which a professor or teacher who is, or immediately before was, a resident of a Contracting State and who visits the other Contracting State for a period not exceeding two years for the purpose of carrying out advanced study or research or for teaching at a University, college, school or other educational institution receives for such work shall not be taxed in that other State, provided that such remuneration is paid to him from sources outside that other State.

(2) This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 22

STUDENTS AND TRAINEES

(1) Payments which a student, apprentice or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his or her full-time education or training receives for the purpose of his or her maintenance, education or training shall not be taxed in that State provided that such payments arise from sources outside that State.

(2) An individual to whom paragraph (1) applies may elect to be treated for tax purposes as a resident of the first-mentioned State. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph (1), and may not be revoked except with the consent of the competent authority of that State.

ARTICLE 23

OTHER INCOME

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6 (Income From Immovable Property (Real Property)), if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits), Article 14 (Independent Personal Services), or Article 18 (Artistes and Athletes) as the case may be, shall apply.

ARTICLE 24

RELIEF FROM DOUBLE TAXATION

(1) In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income or capital the appropriate amount of tax paid to Malta; and, in the case of a United States company owning at least 10 per cent of the voting stock of a company which is a resident of Malta from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid to Malta by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to Malta, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Malta the taxes referred to in paragraphs (2)(b) and (3) of Article 2 (Taxes Covered) shall be considered to be income taxes.

(2) In the case of Malta, double taxation shall be avoided as follows: Subject to the provisions of the law of Malta regarding the allowance of a credit against Malta tax in respect of foreign tax, where, in accordance with the provisions of this Agreement, there is included in a Malta assessment income from sources within United States, the United States tax on such income shall be allowed as a credit against the Malta tax payable thereon. Where a company which is a resident of the United States pays a dividend to a company resident in Malta owning at least 10 per cent of the voting stock in the United States company, the credit shall, in addition, take into account the United States tax payable by the United States company in respect of the profits out of which the dividend is paid.

(3) For the purposes of the preceding paragraphs of this Article, the source of income or profits shall be determined in accordance with the following rules:

(a) Dividends, as defined in paragraph (3) of Article 10 (Dividends), shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State or if paragraph (5) (c) of Article 10 applies.

(b) Interest, as defined in paragraph (4) of Article 11 (Interest), shall be deemed to arise in the State specified in paragraph (6) of Article 11.

(c) Royalties, as defined in paragraph (3) of Article 12 (Royalties), shall be deemed to arise in the State specified in paragraph (5) of Article 12.

(d) Except for income or profits referred to in subparagraphs (a), (b) or (c), and except for income or profits taxed by the United States solely by reason of citizenship in accordance with paragraph (3) of Article 1 (Personal Scope): income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Agreement shall be deemed to arise in that other Contracting State.

ARTICLE 25

NONDISCRIMINATION

(1) Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of the preceding sentence, nationals who are subject to tax by a Contracting State on worldwide income are not in the same circumstances as nationals who are not so subject. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of one or both of the Contracting States.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of paragraph (1) of Article 9 (Associated Enterprises), paragraph (5) of Article 11 (Interest), or paragraph (4) of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State.

Similarly, any debts of an enterprise of a Contracting State, to a resident of the other Contracting State, shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) The provisions of this Article shall apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 26

MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Agreement, he or she may, irrespective of the remedies provided by the domestic law of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or national.

(2) The competent authority shall endeavour if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. In particular the competent authorities of the Contracting States may agree:

(a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits, or allowances between persons, including a uniform position on the application of the requirements of paragraph (2) of Article 25 (Non-discrimination);

(c) to the same characterization of particular items of income;

(d) to the same application of source rules with respect to particular items of income;

(e) to a common meaning of a term; and

(f) to increases in any dollar amounts referred to in the Agreement to reflect monetary or economic developments.

They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) The competent authorities of the Contracting States may prescribe regulations to carry out the purposes of this Agreement.

ARTICLE 27

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) If specially requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of authenticated copies of unedited original documents (including books, paper, statements, records, accounts, or writings), to the same extent such documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

(3) In no case shall the provisions of paragraph (1) be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

ARTICLE 28

DIPLOMATIC AGENTS AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

ENTRY INTO FORCE

(1) This Agreement shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instru-

ments of ratification shall be exchanged at _____________ as soon as possible.

(2) The Agreement shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect in respect of income or profits arising on or after the first day of January of the year in which the Agreement enters into force.

ARTICLE 30

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after 3 years from the date on which this Agreement enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Agreement shall cease to have force and effect as respects income or profits arising on or after January 1 next following the expiration of the 6-month period.

Done at Valletta in duplicate, in the English language, this 21st day of March 1980.

For the Government of the United States of America:

JOAN MARGARET CLARK.

For the Government of the Republic of Malta:

R. STIVALA.

EXCHANGE OF LETTERS BETWEEN THE UNITED STATES AND MALTA RELATING TO UNDERSTANDING IN REGARD TO CERTAIN PROVISIONS OF THE INCOME TAX AGREEMENT

VALLETTA, MALTA, *March 21, 1980.*

MR. ROBERT J. STIVALA,
Secretary, Ministry of Finance, Customs, and People's Financial Investments, Valletta.

SIR: I have the honor of commenting on the Agreement between the United States of America and Malta with respect to taxes on income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this Agreement, the delegation from Malta emphasized the necessity of including in the Agreement additional provisions which will create incentives to promote the flow of investment to Malta.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Malta. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Malta, our Government would be prepared to reopen the discussions in order to reflect in this Agreement provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Government of Malta to foreign investors and which are consistent with the income tax policies of the United States, including treaty policies, with respect to other developing countries.

(2) In the case of profits from the operation of a ship in international waters to which paragraph (5) of Article 8 (Shipping and Air Transport) of the Agreement applies, the said profits shall be deemed to constitute profits to which the provisions of Article 7 (Business Profits) shall apply.

(3) In the case of interest referred to in paragraph (2) of Article 11 of the Agreement and in the case of Royalties referred to in paragraph (2) of Article 12, Malta will bring to charge the income in question at the normal Malta rates as part of the total income of the recipient which is liable to Malta tax for the year in question. In computing the amount of interest and royalties, respectively subject to tax as above, Malta will allow as a deduction any expenses proved to have been incurred in the production of the said income. In applying the limitations set out in the two paragraphs, Malta will restrict its tax on the income so computed (such tax to be determined in an amount arrived at by multiplying the total tax chargeable by a fraction having the net interest or royalty, respectively, as its numerator and the total income as its denominator), to a maximum of 12½% of the relative gross interest or royalty, as the case may be.

If this is in accordance with your understanding, I would appreciate an acknowledgement from you to that effect.

Accept, Sir, the renewed assurances of my highest consideration.

JOAN M. CLARK,
American Ambassador.

VALLETTA, MALTA, *March 21, 1980.*

EXCELLENCY: I have the honour to refer to your letter of today's date, which reads as follows:

"SIR: I have the honour of commenting on the Agreement between the United States of America and Malta with respect to taxes on income, signed today. The following understandings were reached between the two Governments.

"(1) In the process of negotiating this Agreement, the delegation from Malta emphasized the necessity of including in the Agreement additional provisions which will create incentives to promote the flow of investment to Malta.

"The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Malta. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Malta, our Government would be prepared to reopen the discussions in order to reflect in this Agreement provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Government of Malta to foreign investors and which are consistent with the income tax policies of the United States, including treaty policies, with respect to other developing countries.

"(2) In the case of profits from the operation of a ship in international waters to which paragraph (5) of Article 8 (Shipping and Air

Transport) of the Agreement applies, the said profits shall be deemed to constitute profits to which the provisions of Article 7 (Business Profits) shall apply.

"(3) In the case of interest referred to in paragraph (2) of Article 11 of the Agreement and in the case of Royalties referred to in paragraph (2) of Article 12, Malta will bring to charge the income in question at the normal Malta rates as part of the total income of the recipient which is liable to Malta tax for the year in question. In computing the amount of interest and royalties, respectively subject to tax as above, Malta will allow as a deduction any expenses proved to have been incurred in the production of the said income. In applying the limitations set out in the two paragraphs, Malta will restrict its tax on the income so computed (such tax to be determined in an amount arrived at by multiplying the total tax chargeable by a fraction having the net interest or royalty, respectively, as its numerator and the total income as its denominator), to a maximum of 12½ percent of the relative gross interest or royalty, as the case may be.

"If this is in accordance with your understanding, I would appreciate an acknowledgement from you to that effect.

"Accept, Sir, the renewed assurances of my highest consideration.

JOAN M. CLARK,
American Ambassador."

I have the honour to confirm that the contents of your letter are in accordance with my Government's understanding on the matters in question.

R. STIVALA,
Secretary, Ministry of Finance,
Customs and People's Financial Investments.

O

96th Congress } SENATE { Executive
2d Session } { F

CONSULAR CONVENTION WITH THE GERMAN DEMOCRATIC REPUBLIC

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONSULAR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE GERMAN DEMOCRATIC REPUBLIC, SIGNED AT BERLIN ON SEPTEMBER 4, 1979

April 28, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *April 28, 1980.*

To the Senate of the United States:

I am transmitting, for the Senate's advice and consent to ratification, the Consular Convention between the United States of America and the German Democratic Republic signed at Berlin on September 4, 1979. I am also transmitting, for the information of the Senate, the report of the Department of State with respect to the Convention.

The signing of this Convention is a significant step in the process of improving and broadening the relationship between the United States and the German Democratic Republic. Consular relations between the two countries are not now the subject of a modern formal agreement. This Convention will establish firm obligations on such important matters as free communication between a citizen and his consul, notification of consular officers of the arrest and detention of their nationals, and permission for visits by consuls to nationals who are under detention.

I also transmit for the information of the Senate a separate exchange of letters, signed on September 4, 1979, setting forth the understanding of each side that consular officers of the sending State have the right of access under Article 39 of the Convention to persons who are citizens of the sending State. It is a generally accepted principle of international law that each State has the sovereign right to determine acquisition, maintenance and loss of its citizenship.

I welcome the opportunity through this Consular Convention to improve the relations between the two countries and their nationals. I urge the Senate to give the Convention its prompt and favorable consideration.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 7, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit the Consular Convention between the United States of America and the German Democratic Republic, signed at Berlin on September 4, 1979, with the recommendation that you transmit it to the Senate for its advice and consent to ratification.

The Consular Convention is one of several consular conventions which have been negotiated in recent years in an effort to improve consular relations with various countries, particularly those of Eastern Europe.

The the present time, there is no bilateral consular convention between the United States and the German Democratic Republic. This Convention will greatly facilitate the ability of consuls of the United States and consuls of the German Democratic Republic to extend assistance to their fellow nationals in numerous ways and should contribute substantially to the growth of travel and commercial contacts between the two countries.

The specific consular functions and services which will be assured on a reciprocal basis include the issuance of passports and visas, performance of notarial services, and representation of the interests of nationals in estate matters. More significantly, the Convention assures that consuls whose nationals are detained or whose personal freedom is limited in any way will be promptly notified—in no event more than three calendar days after the date of detention—and will have the right to visit and communicate with and provide necessary assistance to such nationals. Visits will be permitted as soon as possible and may not be refused after four calendar days from the date of detention or other limitation of personal freedom. Subsequent visits may be made at intervals not exceeding one month.

The Convention's provisions follow the pattern of bilateral consular conventions in force with a number of countries. Articles 2–7 provide for establishment of consular posts, appointment of officers and employees of such posts, and procedures for terminating their activities. Article 11 provides for inviolability of premises and the residences of consular officers and Article 12 provides for inviolability of the consular archives. Under Article 14, consular officers and members of their families are entitled to personal inviolability and immunity from criminal jurisdiction, provided they are not nationals or permanent residents of the receiving State. This Article also provides such persons immunity from the civil and administrative jurisdiction of the receiving State, with certain stated exceptions relating to non-official activity. The more limited immunities of consular employees and their families are also outlined in this Article. Articles 15–22 provide for additional privileges and immunities of consulates and of members of a consulate and their families. These articles reflect prevailing international practice.

Articles 24–44 relate to consular functions which include, in addition to the functions referred to above, safeguarding the interests of sending State nationals in estate matters and representing the interests of nationals with respect to vessels and aircraft.

A significant feature of the Convention is the agreement set forth in paragraph 11 of Article 39 regarding the treatment in the receiving State of persons who may be regarded as possessing the nationality of both the sending and receiving States. Under this provision the receiving State is obliged, for purposes of consular protection, to regard as a national of the sending State any person bearing a passport of that State containing a valid visa of the receiving State. Thus, the receiving State would be required to abide by the notification and access provisions of Article 39 in cases involving detention or limitation of personal freedom of such persons, even if they are regarded as also possessing the nationality of the receiving State.

This Consular Convention will facilitate our bilateral relations with the German Democratic Republic and greatly advance the interests of nationals of both countries. This Convention does not affect the current legal regime applicable to Berlin.

I also submit an exchange of letters signed on September 4, 1979, which reflects the understanding of each side respecting implementation of Article 39 of the Convention. This exchange of letters, citing generally accepted principles of international law, confirms that each state has the sovereign right to determine whether a person has acquired its citizenship and that consular officers have the right of consular access under Article 39 to persons who are citizens of the sending State. I recommend that it be transmitted to the Senate for its information.

Respectfully submitted.

CYRUS VANCE.

CONSULAR CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE GERMAN DEMOCRATIC REPUBLIC

The United States of America and the German Democratic Republic,

Desiring to develop and regulate consular relations, and, thus, to contribute towards further developing the friendly relations between the two countries, and to facilitate the protection of their national interests and the protection of the rights and interests of their nationals;

Have decided to conclude this Consular Convention and have appointed as their plenipotentiaries for this purpose:

For the United States of America:

David B. Bolen, Ambassador of the United States of America,

For the German Democratic Republic:

Kurt Nier, Deputy Minister of Foreign Affairs,

who, having communicated to each other their respective full powers, which were found in good and due form, have agreed as follows:

PART I—DEFINITIONS

ARTICLE 1

For the purpose of the present Convention, the terms listed below shall have the following meanings:

(a) "Consulate" means a consulate-general, consulate, vice-consulate, or consular agency, which is separate from the diplomatic mission;

(b) "Consular district" means the area in which a consular officer is entitled to perform consular functions;

(c) "Head of a consulate" means the consul-general, consul, vice-consul or consular officer who is charged by the sending State to head a consulate;

(d) "Consular officer" means any person, including the head of a consulate, who is charged by the sending State with the performance of consular functions;

(e) "Consular employee" means any person who performs administrative, technical, or service duties at a consulate;

(f) "Member of a consulate" means any consular officer or consular employee;

(g) "Members of the family" means the spouse and minor children of a member of a consulate who are part of his or her household. Upon the request of the sending State, and with the consent of the receiving State, the parents and other persons who are related to a member of a consulate and who are a part of his or her household may also be regarded as family members;

(h) "Consular premises" means buildings or parts of buildings, as well as the grounds ancillary thereto, used exclusively for the purposes of a consulate, regardless of ownership;

(i) "Consular archives" means all official correspondence, codes and ciphers, documents, records, files and books and technical office equipment of the consulate; as well as office furniture intended for their storage and safekeeping;

(j) "Vessel of the sending State" means any vessel sailing under the flag of the sending State, in accordance with the law of the sending State, excluding warships;

(k) "Aircraft of the sending State" means any aircraft flying under the nationality and registration marks of the sending State, in accordance with the law of the sending State, excluding military aircraft;

(l) "Law" means with regard to the United States of America, all federal, state and local laws, ordinances, decisions and other provisions, including court rulings, which have legal force; and with regard to the German Democratic Republic, all laws and other legal provisions.

PART II—ESTABLISHMENT OF CONSULATES, APPOINTMENT AND TERMINATION OF FUNCTIONS OF MEMBERS OF A CONSULATE

ARTICLE 2

Establishment of Consulates

1. The sending State may establish a consulate in the receiving State only with the consent of the receiving State.

2. The seat of the consulate, its status, its consular district, and the number of members of a consulate, as well as any changes pertaining thereto, shall be determined by agreement between the sending and receiving States.

ARTICLE 3

Appointment of the Head of a Consulate

1. Prior to the assignment of the head of a consulate by the sending State, the consent of the receiving State concerning the proposed person shall be obtained through diplomatic channels.

2. The sending State shall forward to the receiving State through diplomatic channels the consular commission or other corresponding document for the appointment of the head of the consulate. This document shall designate the name of the head of the consulate, his or her rank, as well as the seat of the consulate and the consular district.

3. The head of the consulate may enter upon the performance of his or her functions only after the receiving State has issued to him or her an exequatur or other authorization. Upon the presentation of the consular commission or other corresponding document for the appointment of the head of the consulate, the receiving State shall as soon as possible issue to him or her an exequatur or other authorization.

4. The receiving State may permit the head of a consulate to exercise his or her functions on a provisional basis until such time as an exequatur or other authorization has been issued.

5. The competent authorities of the receiving State shall, as soon as permission, including provisional permission, for the exercise of his

or her functions has been granted, take all measures necessary to enable the head of the consulate to exercise his or her functions and to enjoy the rights, facilities, privileges and immunities granted him or her under this Convention and under the law of the receiving State.

ARTICLE 4

Temporary Exercise of the Functions of the Head of a Consulate

1. If for any reason the head of a consulate is unable to exercise his or her functions, or if the position of the head of consulate is vacant, the sending State may place its consulate under the temporary charge of a consular officer of the same or of another consulate in the receiving State or of a member of the diplomatic staff of the diplomatic mission of the sending State. The sending State shall notify the receiving State in advance through diplomatic channels of the name of the person appointed as acting head of a consulate.

2. A person appointed as temporary head of a consulate shall enjoy the same rights, facilities, privileges and immunities enjoyed by a head of a consulate under this Convention.

3. If a member of the diplomatic staff of the diplomatic mission of the sending State is charged temporarily with the functions of a head of a consulate, the diplomatic privileges and immunities to which he or she is entitled by virtue of his or her diplomatic status are not affected.

ARTICLE 5

Notification of the Designation of Consular Officers and the Employment of Consular Employees

1. The sending State shall communicate through diplomatic channels, in advance, in writing, to the receiving State the full name, functions and class of each consular officer, his or her arrival, final departure or termination of functions, as well as all other changes affecting the person's status which occur while he or she is working in the consulate.

2. The sending State shall also notify the receiving State in writing of:

(a) the designation of all consular employees, their full name, nationality and functions, their arrival, their final departure or termination of their functions, as well as other changes affecting their status in the consulate;

(b) the arrival and final departure of members of the family of a member of a consulate and when such an individual becomes or ceases to be a member of the family;

(c) the employment or dismissal of a consular employee who is a national or permanent resident of the receiving State.

ARTICLE 6

Nationality of Consular Officers

Consular officers shall be nationals of the sending State and may not be nationals nor permanent residents of the receiving State.

ARTICLE 7

Procedures for Terminating Activities of Members of a Consulate

1. The receiving State may at any time, without having to explain its decision, notify the sending State through diplomatic channels that a consular officer is *persona non grata* or that a consular employee is unacceptable. In such a case, the sending State shall recall such person or terminate his functions in the consulate.

2. If the sending State fails within a reasonable time to carry out the obligations contained in paragraph 1 of this Article, the receiving State may refuse to continue recognition of the person concerned as a member of the consulate.

3. The functions of a member of a consulate shall come to an end, upon the:

(a) notification by the sending State to the receiving State that his or her functions have ended;

(b) withdrawal by the receiving State of the exequatur or other authorization, or

(c) notification by the receiving State to the sending State that the receiving State has ceased to consider the person as a member of the consulate.

PART III—RIGHTS, FACILITIES, PRIVILEGES, AND IMMUNITIES

ARTICLE 8

Protection of and Facilities for Consulates and Members of a Consulate

1. The receiving State shall provide the consulate full facilities so that the consulate can operate and perform its consular functions.

2. The receiving State shall take all appropriate measures to insure that all members of the consulate are able effectively to perform their functions and that they as well as the members of their families enjoy the rights, facilities, privileges and immunities provided them under this Convention.

3. The receiving State shall take all appropriate measures to prevent any attack upon the person, freedom or dignity of a member of a consulate and members of the family of members of a consulate who are neither nationals nor permanent residents of the receiving State.

ARTICLE 9

Acquisition of Consular Premises and Residences

1. The sending State shall be entitled, on its own, or through any natural or juridical person authorized by it, in accordance with the law of the receiving State, to acquire by ownership, lease, rent or any other form of tenure, consular premises, a residence for the head of the consulate, and a residence for each consular officer and each consular employee who is not a national of or a permanent resident of the receiving State.

2. Under the conditions referred to in paragraph 1, the sending State may, likewise, construct or improve such buildings and appurtenances.

3. The receiving State shall render all appropriate assistance and support to the sending State in carrying out the rights specified in paragraph 1 of this Article.

4. Nothing in this Article shall be construed to exempt the sending State from compliance with the law of the receiving State relating to buildings, including the construction and alterations thereof and the law relating to town planning and zoning.

ARTICLE 10

The National Flag and Coat of Arms

1. The sending State shall be entitled to display the national coat of arms and the designation of the consulate on the consular premises in the languages of the sending and of the receiving States.

2. The sending State shall be entitled to fly the flag of the sending State on consular premises, on the residence of the head of the consulate, as well as on the means of transport of the head of the consulate used in the performance of his or her official duties.

3. In exercising the rights provided by this Article, the sending State shall observe the law and customs of the receiving State.

ARTICLE 11

Inviolability of Consular Premises and Residences of Consular Officers

1. The consular premises shall be inviolable. The authorities of the receiving State may not enter the consular premises without the consent of the head of the consulate, the chief of the diplomatic mission of the sending State, or a person designated by one of those persons. The receiving State shall take all appropriate measures to assure the protection of the consular premises.

2. The provisions of paragraph 1 shall apply likewise to the residences of consular offices.

ARTICLE 12

Inviolability of Consular Archives

The consular archives shall be inviolable at all times and wherever they may be.

ARTICLE 13

Freedom of Communications

1. A consulate shall be entitled to exchange communications with its government, with diplomatic missions of the sending State and with other consulates of the sending State wherever they may be. For this purpose, the consulate may employ all ordinary means of communica-

tions, including diplomatic and consular couriers, diplomatic and consular bags and codes and ciphers. The consulate may install and operate a radio transmitter only with the consent of the receiving State.

2. With respect to use of public means of communication, the same conditions shall be applied in the case of a consulate as are applied in the case of the diplomatic mission of the sending State.

3. The official correspondence of a consulate and the consular bag shall be inviolable. The packages constituting the consular bag must bear visible external marks of its character and must be sealed. The consular bag may contain nothing other than official correspondence and articles intended for official use. The official correspondence of a consulate and the packages constituting the consular bag shall neither be opened nor detained.

4. A consular courier who possesses an official document indicating his status and the number of packages constituting the consular bag shall be granted by the receiving State the same rights, facilities, privileges and immunities as are enjoyed by a diplomatic courier of the sending State. The provisions of this paragraph shall likewise apply to *ad hoc* couriers, except that their immunities shall cease when the consular bag has been handed over to the consignee.

5. The consular bag may be entrusted to the captain of an aircraft or to master of a vessel. These persons shall be provided with an official document which indicates the number of packages constituting the consular bag. They shall not, however, be considered consular couriers. By arrangements with the appropriate authorities of the receiving State, and in compliance with the safety regulations of the receiving State, the consulate may charge a member of the consulate to take possession of the consular bag directly and freely from the master of the vessel or captain of the aircraft or to deliver such bag to him or her.

ARTICLE 14

Immunity of Members of a Consulate from the Jurisdiction of the Receiving State

1. Consular officers and members of their families shall be immune from the criminal, civil and administrative jurisdiction of the receiving State, and are not subject to coercive measures of the receiving State under its law.

2. Consular employees and members of their families shall be immune from the criminal jurisdiction of the receiving State. They also shall be immune from the civil and administrative jurisdiction of the receiving State and are not subject to coercive measures of the receiving State under its law respecting any act performed by them in the exercise of their official functions.

3. The provisions of paragraphs 1 and 2 shall not, however, apply to civil actions:

(a) concerning private immovable property in the receiving State, unless it is held on behalf of the sending State for the purposes of a consulate;

(b) relating to succession in which these persons are involved as executor, administrator, heir or legatee in a private capacity and not on behalf of the sending State;

(c) relating to any professional or commercial activities engaged in by these persons in the receiving State outside of their official functions;

(d) resulting from contracts that were concluded by such persons unless they were acting expressly or impliedly on behalf of the sending State;

(e) brought by a third party for damage arising from an accident in the receiving State caused by means of transport.

4. No measures of execution shall be taken against persons mentioned in paragraphs 1 or 2, except in the cases under paragraph 3 and then only under the conditions that they may be taken so as not to infringe upon the inviolability of their person or residence.

ARTICLE 15

Exemption from Obligation to Give Evidence

1. A member of a consulate and members of his or her family may be called upon to attend as witnesses in the course of judicial or administrative proceedings.

2. A member of a consulate and members of his or her family are not required to give evidence concerning matters relating to the exercise of the official functions of a member of a consulate or to produce official correspondence or documents. Such persons are also entitled to decline to give evidence as expert witnesses with regard to the law of the sending State.

3. No coercive measure or penalty may be applied to a member of a consulate or a member of his or her family if the person declines to appear or give evidence concerning the matters referred to in paragraphs 1 or 2.

4. The courts or other competent authorities of the receiving State which in accordance with the provisions of paragraphs 1 and 2 take testimony shall take all appropriate measures to avoid hindering the performance of consular functions. Upon the request of the head of a consulate, such testimony may, when possible, be given orally or in writing at the consulate or at the residence of the person concerned.

5. A member of a consulate and members of his or her family shall not be required to take an oath or vow or give an assurance in connection with the giving of testimony.

ARTICLE 16

Waiver of Immunity

1. The sending State may waive the immunity from jurisdiction of a member of a consulate and of members of his or her family provided in Articles 14 and 15. Except as provided under the provisions of paragraph 2 of this Article, such waiver shall always be express and in writing.

2. In the event a member of a consulate or a member of his or her family initiates legal proceedings, with respect to which he or she would enjoy immunity under Article 14, he or she may not invoke immunity with regard to any counter-claim directly related to the principal claim.

3. Waiver of immunity from jurisdiction with respect to legal proceedings shall not be held to imply waiver of immunity with respect to the execution of judgment, for which a separate waiver shall be necessary.

ARTICLE 17

Exemption from Compulsory Services

Members of a consulate and members of their families shall be exempt from compulsory public or personal services of any kind in the receiving State.

ARTICLE 18

Exemption from Registration

Members of a consulate and members of their families shall be exempt from all obligations under the law of the receiving State regarding registration and residence permits and other related regulations normally applicable to persons who are not nationals of the receiving State.

ARTICLE 19

Exemption of the Sending State From Taxation on Immovable and Movable Property

1. The receiving State shall neither impose on nor collect from the sending State any national, regional or local dues or taxes of any kind with respect to:

(a) consular premises, the residence of the head of a consulate and the residences of members of a consulate used in accordance with Article 9;

(b) transactions or documents relating to the immovable property referred to in subparagraph (a) of this paragraph.

2. The receiving State shall neither impose on nor collect from the sending State any national, regional or local dues or taxes with respect to movable property which is owned, leased or otherwise possessed by the sending State and which is used exclusively for consular purposes, as well as dues and taxes in connection with the acquisition, possession or maintenance of such property.

3. The provisions of subparagraph 1(a) of this Article shall not apply to payment for services rendered.

4. The exemptions accorded by paragraph 1 of this Article shall not apply to such dues and taxes if under the law of the receiving State they are payable by a person contracting with the sending State or with a person acting on behalf of the sending State.

ARTICLE 20

Exemption of Members of a Consulate From Taxation

1. A member of a consulate and members of his or her family shall be exempt from payment of all dues and taxes and similar charges of any kind, whether national, regional or municipal, except:

(a) indirect dues and taxes of a kind normally included in the price of goods and services;

(b) dues and other taxes imposed with respect to private immovable property located in the receiving State, unless an exemption is provided by Article 19 of this Convention;

(c) estate and inheritance taxes and taxes on the transfer of property rights in the receiving State, except if exemption is provided under paragraph 2 of this Article;

(d) dues and other taxes on private income derived from sources in the receiving State;

(e) dues and other charges for specific services rendered;

(f) registration, court, record, mortgage and stamp fees, as well as dues and taxes imposed on transactions and on documents relating to transactions, except when exemption is provided under Article 19.

2. No national, regional or local estate, succession, or inheritance tax or any other tax or charge with respect to the transfer of movable property at death of a member of a consulate or a member of his or her family shall be imposed by the receiving State, provided that the presence of the property in the receiving State was due solely to the presence of the deceased in the receiving State in his or her capacity as a member of a consulate or as a member of a family of a member of a consulate.

3. A member of a consulate who employs persons whose wages and salaries are not exempt from the payment of dues and taxes in the receiving State shall observe the requirements under the law of the receiving State relating to an employer's obligation respecting payment of dues and taxes.

ARTICLE 21

Exemption From Customs Duties And Inspection

1. All articles, including motor vehicles, imported or exported for the official use of a consulate, shall be exempt in the receiving State from customs duties and other dues and taxes of any kind to the same extent as if they were imported or exported by the diplomatic mission of the sending State for its official use.

2. A consular officer and members of his or her family shall be exempt from customs duties and other charges imposed upon or by reason of importation or exportation of all articles intended for their own personal use, including articles for the equipment of their households, to the same extent as a member of the diplomatic staff of the diplomatic mission of the sending State and members of his or her family.

3. A consular employee and members of his or her family shall be exempt from customs duties and other charges imposed upon or by reason of the importation or exportation of articles for their own personal use, including articles for the equipment of their households, to the same extent as a member of the administrative and technical staff of the diplomatic mission of the sending State and members of his or her family.

4. Personal baggage of a consular officer and members of his or her family shall be exempt from customs inspection. It may be inspected only in cases where there is serious reason to believe that they contain articles other than those mentioned in paragraph 2, or articles the importation or exportation of which is prohibited by the law of the receiving State or articles which are subject to the law of quaran-

tine. Such inspection may be undertaken only in the presence of the consular officer concerned or members of his or her family or a person who has been designated to represent him or her.

5. The exemptions referred to in paragraphs 1 to 3 inclusive shall not apply to charges for the safekeeping, storage or cartage of imported or exported articles when such services have been initiated by a member of a consulate or a member of his or her family.

ARTICLE 22

Freedom of Movement

Subject to the law of the receiving State concerning zones where entry or stay is prohibited or regulated for reasons of national security, the receiving State shall ensure for all members of a consulate and members of their families freedom of movement and travel in the receiving State.

ARTICLE 23

Exclusion From the Enjoyment of Rights, Facilities, Privileges and Immunities

Consular employees and members of the families of members of a consulate who are either nationals or permanent residents of the receiving State shall not enjoy the rights, facilities, privileges and immunities provided by this Convention, except respecting immunity from the obligation to give evidence in matters connected with the discharge of official duties as provided in Article 15.

PART IV—CONULAR FUNCTIONS

ARTICLE 24

Functions of a Consular Officer

A consular officer shall be entitled to:

(a) protect the rights and interests of the sending State and of its nationals and juridicial persons;

(b) render assistance to nationals and juridical persons of the sending State;

(c) contribute to the development of economic, commercial, cultural, scientific, and tourist relations between the sending and the receiving States;

(d) promote in other ways the development of friendly relations between the sending and receiving States;

(e) ascertain by all lawful means conditions and developments in the political, economic, commercial, cultural and scientific life of the receiving State, and report thereon to the government of the sending State.

ARTICLE 25

Exercise of Consular Functions

1. In accordance with his authorization from the sending State, a consular officer shall be entitled to carry out the functions described in this Convention. He or she may also carry out other consular

functions entrusted to him or her by the sending State which are not prohibited by the law of the receiving State to which the receiving State does not object.

2. A consular officer shall be entitled to exercise consular functions only in the consular district to which he or she is assigned. A consular officer shall be entited to exercise consular functions outside the limits of his or her consular district only when the advance consent of the receiving State is given separately in each instance.

3. In exercising his or her functions, a consular officer may approach orally or in wriitng:

(a) the competent authorities within his or her consular district;

(b) the competent central authorities of the receiving State to the extent allowed by the law and custom of the receiving State.

4. With the approval of the receiving State the sending State may perform consular functions in the receiving State on behalf of a third State.

5. A consulate shall be entitled to levy in the receiving State consular fees authorized under the law of the sending State. Such consular fees shall be exempt from all dues and taxes in the receiving State.

ARTICLE 26

Representation Before the Authorities of the Receiving State

1. A consular officer shall be entitled, in accordance with the law of the receiving State, to take appropriate measures for the protection of the rights and interests of nationals or juridical persons of the sending State, before the courts and other authorities of the receiving State, when because of absence or any other reason, these nationals are not in a position to undertake timely defense of their rights and interests.

2. The measures referred to in paragraph 1 shall cease as soon as the national or juridical person appoints a representative or personally assumes the defense of these rights and interests.

3. The provisions of this Article do not, however, authorize a consular officer to act as an attorney-at-law.

ARTICLE 27

Functions Regarding Citizenship Matters

A consular officer shall be entitled:

(a) to register nationals of the sending State;

(b) to accept applications and issue or deliver documents on matters of citizenship, subject to the law of the sending State.

ARTICLE 28

Functions With Regard to Travel Documents

A consular officer shall be entitled to:

(a) issue to nationals of the sending State passports or other travel documents, extend the validity of the same, cancel them, withdraw them, as well as make other changes in them;

(b) issue visas or other documentation permitting persons to travel to or through the sending State.

ARTICLE 29

Functions Regarding Civil Status Matters

1. A consular officer shall be entitled:

(a) to maintain registers relating to births and deaths of nationals of the sending State and to receive communications and documents on the same;

(b) to accept any application or declaration relating to civil status from nationals of the sending State.

2. The provisions of paragraph 1 do not exempt the persons concerned from the obligations under the law of the receiving State respecting these matters.

ARTICLE 30

Notarial Functions

A consular officer shall, in accordance with his or her authorization from the sending State, be entitled:

(a) to accept, legalize or certify declarations and testamentary dispositions of nationals of the sending State and to issue appropriate documents;

(b) to legalize or certify contracts concluded between nationals of the sending State and documents pertaining to unilateral acts of nationals of the sending State, provided these do not establish, transfer or abolish titles to premises and buildings located in the receiving State;

(c) to acknowledge or certify signatures of nationals of the sending State on documents intended for use in the sending State and to certify copies and photocopies of papers and documents of any kind and extracts thereof;

(d) to authenticate documents and acts drawn up or issued by the competent authorities of the receiving State and intended for use in the sending State;

(e) to certify translations of documents issued by the authorities of the sending or receiving State;

(f) to perform other notarial acts for which he or she has authority from the sending State, to the extent that they are not contrary to the law of the receiving State.

ARTICLE 31

Legal Force of Acts and Documents

The acts and documents specified in Article 30, legalized, certified or authenticated by a consular officer of the sending State, shall have in the receiving State the same validity and effect as the acts and documents drawn up, executed, legalized or certified by the competent authorities of the receiving State, provided they are not contrary to the law of the receiving State.

ARTICLE 32

Serving Judicial and Other Documents

A consular officer shall be entitled to serve judicial and other documents on nationals of the sending State in accordance with existing international agreements which are in force between the sending and receiving States or, in the absence of such international agreements, to the extent permitted by the law of the receiving State.

ARTICLE 33

Safekeeping of Articles

1. In accordance with his or her authorization from the sending, and when not in contravention of the law of the receiving, State, a consular officer shall be entitled to:

(a) accept for safekeeping from nationals of the sending State documents, money, valuables and other objects belonging to them;

(b) accept from the authorities of the receiving State papers, money, valuables and other objects which have been lost by nationals of the sending State during their stay in the receiving State in order to return them to their owners.

2. The objects accepted for safekeeping in accordance with paragraph 1(a) may be exported from the receiving State only if such exportation is not contrary to the law of that State.

ARTICLE 34

Notification of the Establishment of Guardianship or Trusteeship

1. The competent authorities of the receiving State shall notify a consular officer in writing of instances in which it is necessary to appoint a guardian or trustee for a national of the sending State who is not of age or is not in a position to perform legal acts, or to appoint a trustee for a national of the sending State for the purpose of administering the property in the receiving State of such national when for whatever reason the property cannot be administered by the national.

2. A consular officer of the sending State may, on matters mentioned in paragraph 1, approach the appropriate authorities of the receiving State, and, in particular, may propose appropriate persons to be appointed a guardian or a trustee.

ARTICLE 35

Information on the death of a national of the sending State

When the competent authorities of the receiving State learn of the death of a national of the sending State in the receiving State, they shall immediately notify a consular officer of the sending State and, upon his or her request, send him or her a copy of the death certificate or other appropriate documentation confirming the death.

ARTICLE 36

Information on the estate of a deceased national

Whenever the competent authorities of the receiving State learn of:

(a) the initiation of the administration of an estate resulting from the death in the receiving State of a national of the sending State who leaves in the receiving State no person authorized to administer or to conserve the estate and who has no representative there; or

(b) the initiation of the administration of an estate of a person, regardless of nationality, who has left in the receiving State an estate in which a national of the sending State who is not a permanent resident of the receiving State and who has no representative there may have an interest under a will or otherwise in accordance with the law of the receiving State,

they shall as promptly as possible so inform a consular officer of the sending State.

ARTICLE 37

Functions relating to estates matters

A consular officer shall be entitled, in relation to estate matters specified in Article 36 and, to the extent permitted under the law of the receiving State:

(a) to request the competent authorities of the receiving State to take measures for the safeguarding, preservation and administration of the estate;

(b) to be present during, or otherwise to participate in, the taking of the measures referred to in subparagraph (a);

(c) to arrange for the representation of a national of the sending State, having a legitimate interest in the estate, who is neither present nor represented in the receiving State.

ARTICLE 38

Temporary Custody and Return of Monies and Personal Items of Deceased Sending State Nationals

1. If a national of the sending State dies during his temporary stay in the receiving State or during transit through that State, the competent authorities of the receiving State are obliged to deliver without delay to a consular officer of the sending State money and personal effects in the possession of the national for the purpose of their temporary custody and transfer to a person who has a claim to such money or effects. This obligation exists insofar as there is no person in the receiving State who is entitled to claim such property, also insofar as the money and effects are not retained by the competent authorities of the receiving State for the purposes of a legal inquiry and provided that such provisional custody shall be relinquished in accordance with the law of the receiving State to a duly appointed administrator or other authorized person.

2. The receiving State will permit the export of the monies and personal effects mentioned in paragraph 1 with the exception of monies and personal effects obtained in the receiving State, the export of which was forbidden according to the law of the receiving State at the time of death.

ARTICLE 39

Communication With Nationals of the Sending State

1. A consular officer shall be entitled, in his or her consular district, to communicate and meet with any national of the sending State, to render him or her any kind of assistance, to assist him or her in dealings with authorities of the receiving State, and to arrange for the assistance of a lawyer and to arrange for an interpreter.

2. The receiving State shall in no way restrict the relations between the national of the sending State and the consular officer.

3. The authorities of the receiving State shall assist a consular officer to obtain information concerning the whereabouts of persons who possess the nationality of the sending State so that the consular officer can communicate or meet with these nationals.

4. In any case in which a national of the sending State is subject to detention, arrest or other form of limitation of his or her personal freedom, the competent authorities of the receiving State shall inform a consular officer of the sending State. This notification shall take place immediately, but, in any event, not later than after three calendar days from the date on which the national was detained, arrested or placed under any form of limitation of his or her personal freedom. Upon his or her request, a consular officer shall be informed of the reasons for which the national has been detained, arrested or otherwise limited in his or her personal freedom.

5. A consular officer shall be entitled to visit a national of the sending State who has been detained, arrested or subjected to any other form of limitation of his or her personal freedom, including such national who is in custody pending trial or who is serving a prison sentence in the receiving State, to converse and to correspond with him or her in the language of the sending or the receiving State or to arrange for his or her legal representation. These visits shall take place as soon as possible, but, in any case, not later than after four calendar days from the date on which such national has been detained, arrested or subjected to any other form of limitation of personal freedom. The visits may be made periodically, but at intervals of not more than one month.

6. The competent authorities of the receiving State shall immediately inform the national of the sending State who is subjected to any form of limitation of personal freedom of all rights accorded to him by this Article to communicate with a consular officer.

7. A consular officer shall be entitled to receive from and send to a national of the sending State who is under any form of limitation of personal freedom letters or other correspondence.

8. A consular officer is entitled to provide to a national of the sending State who is under any form of limitation of personal freedom parcels containing items for personal use such as food, clothes, and

reading and writing materials, in accordance with the regulations of the detention facility concerned.

9. In the case of a trial of a national of the sending State in the receiving State, the appropriate authorities shall, at the request of a consular officer, inform such officer of the charges against such national. A consular officer may be present during all judicial proceedings against such national, in accordance with the applicable judical procedures of the receiving State.

10. The rights contained in this Article, shall be exercised in accordance with the aw of the receiving State, so long as these laws do not nullify the purposes for which these rights are accorded.

11. The provisions of this Article relating to nationals of the sending State shall likewise apply to persons who are also considered by the receiving State to be nationals of the receiving State if the person has entered the receiving State for a temporary stay on the basis of a valid sending State passport or other lawful travel document of the sending State and has received from the receiving State a valid entry visa or other document authorizing entry into the receiving State. The provisions of this Article shall remain valid for such persons even though the temporary period for which they have been authorized to remain in the receiving State has expired due to judicial or administrative proceedings preventing timely departure from the receiving State. Such persons shall also be permitted to leave the receiving State if their travel document issued by the sending State is valid and if an exit visa from the receiving State has been obtained in a manner normally applicable in the case of nationals of the sending State present in the receiving State for a temporary stay.

ARTICLE 40

Rendering Assistance to Vessels

1. A consular officer shall be entitled to provide any type of assistance and support to a vessel of the sending State which is in a port or other anchorage of the receiving State or is in the internal waters, territorial sea or inland waters of the receiving State.

2. A consular officer may board a vessel of the sending State as soon as the vessel has been given permission to establish contact with the shore. On such occasions, the consular officer may be accompanied by members of the consulate with the approval of the competent authorities of the receiving State.

3. The master and members of the crew shall be entitled to meet and communicate with the consular officer and to visit the consulate in accordance with the law of the receiving State, with particular regard to the law of the port and the law relating to crossing the border.

4. A consular officer may address the competent authorities of the receiving State and request their support in carrying out his or her functions with regard to all matters relating to a vessel of the sending State and with regard to the master, members of the crew, passengers and cargo.

ARTICLE 41

Rendering Assistance to Master and Crew

1. Without prejudice to any rights of the authorities of the receiving State the consular officer shall be entitled:

(a) to investigate any incident which occurs aboard a vessel of the sending State, to question the master and any member of the crew with reference to these incidents, to inspect the vessel's papers, to receive information in connection with the voyage and destination of the vessel and also to render assistance in connection with the entry and departure of a vessel and its stay in the port;

(b) to settle disputes between the master and a crew member, including disputes concerning wages and employment contracts, insofar as this action is authorized by the law of the sending State, and is not contrary to the laws of the receiving State;

(c) to take steps connected with the signing on and discharging of the master or of a crew member;

(d) to take steps for medical treatment of the master, a member of the crew or a passenger of the vessel and to arrange for their repatriation to the sending State;

(e) to receive, draw up, certify or prolong any declaration or other document provided for by the law of the sending State in regard to a vessel of the sending State or its cargo;

(f) to undertake other steps to apply the law of the sending State concerning merchant shipping as long as his or her actions do not conflict with the law of the receiving State.

2. The consular officer shall be entitled, in accordance with the law of the receiving State to appear together with the master or a crew member before the courts or other authorities of the receiving State in order to render them any assistance.

ARTICLE 42

Protection of Interests in Case of Investigations on Board a Vessel

1. If the courts or other competent authorities of the receiving State intend to take coercive measures or to conduct an investigation on board a vessel of the sending State which is in the internal waters, territorial or inland waters of the receiving State, the consular officer shall be notified in advance by the competent authorities of the receiving State so that he or she can be present when such actions are being taken. If the consular officer is not present when such actions are being taken, the competent authorities of the receiving State shall, on request, inform him or her thereof in writing. If the urgency of the measures to be taken does not allow prior notification of the consular officer, the competent authorities of the receiving State shall inform the consular officer in writing of the occurrence and the action taken, although the consular officer has not so requested.

2. The provisions of paragraph 1 shall likewise apply if the competent authorities of the receiving State summon the master or member of the crew of a vessel of the sending State to answer questions on shore on matters affecting the vessel.

3. Except at the request or with the permission of the consular officer or of the master of the vessel of the sending State, the judicial or other competent authorities of the receiving State shall not interfere on board a vessel of the sending State in the internal affairs of the vessel on questions of relations between the members of the crew, labor relations, discipline on board and other activities of an internal character relating to the vessel provided that the law relating to the peace and safety of the receiving State is not violated.

4. The provisions of this Article shall not be applied, however, to ordinary customs, passport and sanitary controls or to other measures undertaken by the competent authorities of the receiving State at the request of, or with the consent of, the master of the vessel. These provisions shall also not be applied in respect of measures undertaken, in accordance with international agreements in force between the sending and receiving States, for the saving of human life at sea and the prevention of pollution of the sea.

ARTICLE 43

Assistance in the Case of Damage to Vessels

1. If a vessel of the sending State is wrecked, grounded or suffers any other damage in a port or in the internal, territorial or inland waters of the receiving State, the competent authorities of the receiving State shall inform a consular officer as soon as possible and inform him or her of the measures taken for saving the passengers and crew and salvaging the vessel and its cargo.

2. The consular officer may give any assistance to a vessel of the sending State, the members of the crew and the passengers, as well as take measures for safeguarding the cargo and repairing the vessel. He may also ask the authorities of the receiving State to undertake such measures.

3. If the owner of a vessel of the sending State, the master or other authorized person is not in a position to undertake the necessary measures for safeguarding, salvaging or disposing of the vessel or its cargo, the consular officer of the sending State, on behalf of the owner, may undertake those measures which the owner of the vessel or the cargo would himself or herself undertake in such a case.

4. The provisions of paragraphs 1, 2 and 3 shall also apply to objects belonging to a national of the sending State and which were on board a vessel, whether of the sending State or of a third state, which were found stranded on the shore or in the waters of the receiving State, or have been brought to a port of the receiving State.

5. The competent authorities of the receiving State shall extend all necessary assistance to a consular officer in taking the measures relating to the average of a vessel of the sending State.

6. A vessel of the sending State which has suffered damage as well as its cargo and provisioins, shall be exempt from cutsoms duities, charges and fees in the receiving State, unless the vessel and its cargo are stored for use in that State.

ARTICLE 44

Functions with Regard to Aircraft

Articles 40 through 43 of this Convention shall also apply to Civil aircraft to the extent they are applicable and on the condition that such application is not contrary to any international agreements in force betweeen the sending and receiving States.

PART V—GENERAL AND FINAL PROVISIONS

ARTICLE 45

Observing the Law of the Receiving State

1. All persons enjoying rights, facilities, privileges and immunities under this Convention are obliged, without prejudice to the same, to observe the law and customs of the receiving State, including traffic regulations, and are also obliged not to interfere in the internal affairs of the receiving State.

2. The consular premises may not be used for purposes inappropriate to the exercise of consular functions or inappropriate to the character of the consulate.

3. A consular officer or a consular employee who is a national of the sending State may not undertake any activity for personal gain in the receiving State outside official functions.

4. All means of transportation belonging to or operated by the sending State or members of a consulate and their families, who are not nationals or permanent residents of the receiving State, shall be adequately insured against civil actions by third parties.

ARTICLE 46

Performance of Consular Functions by a Diplomatic Mission

1. The provisions of this Convention relating to consular functions, rights, facilities, privileges and immunities shall also apply in the case of consular functions being performed by a diplomatic mission.

2. The names of the members of the diplomatic staff of the diplomatic mission entrusted with the performance of consular functions shall be communicated through diplomatic channels to the receiving State.

3. The members of the diplomatic staff of the diplomatic mission referred to in paragraph 2 shall continue to enjoy the privileges and immunities granted them by virtue of their diplomatic status.

ARTICLE 47

Ratification, Entry into Force and Duration of the Convention

1. This Convention shall be subject to ratification. It shall enter into force after the expiration of thirty days following the date of the exchange of instruments of ratification which shall take place at Washington.

2. This Convention shall remain in force until the expiration of six months from the date on which one of the Contracting Parties gives to the other Contracting Party written notification through diplomatic channels of its intention to terminate the Convention.

In Witness Whereof, the respective plenipotentiaries of the Contracting Parties have signed this Convention and affixed thereto their seals.

Done at Berlin on September 4, 1979, in two originals, in the English and German languages, both texts being equally authentic.

For the United States of America:	For the German Democratic Republic:
David B. Bolen.	Kurt Nier.

His Excellency David B. Bolen,
Ambassador of the United States of America.

Excellency: I have the honour to refer to the Consular Convention between the German Democratic Republic and the United States of America signed today, and I am authorized to confirm the following understanding in this connection:

"On the basis of the generally accepted principles of international law, among which is the sovereign right of each state to determine the conditions under which its citizenship is acquired, maintained or lost, the two Contracting Parties agree that, with regard to the implementation of Article 39 of the Consular Convention signed today, consular officers of the respective sending state have the right of access to those persons in the respective receiving state who are citizens of the respective sending state."

I propose that this letter and your written confirmation constitute an agreement between our two Governments.

Accept, Excellency, the assurances of my high consideration.

Kurt Nier,
Deputy Minister of Foreign Affairs
of the German Democratic Republic.

BERLIN, *September, 4, 1979.*

His excellency KURT NIER,
Deputy Minister of Foreign Affairs of the German Democratic Republic

EXCELLENCY: I confirm the receipt of your letter of September 4, 1979, which reads as follows:

"I have the honor to refer to the Consular Convention between the German Democratic Republic and the United States of America signed today, and I am authorized to confirm the following understanding in this connection:

"On the basis of the generally accepted principles of international law, among which is the sovereign right of each state to determine the conditions under which its citizenship is acquired, maintained or lost, the two contracting parties agree that, with regard to the implementation of article 39 of the consular convention signed today, consular officers of the respective sending state have the right of access to those persons in the respective receiving state who are citizens of the respective sending state."

I propose that this letter and your written confirmation constitute an agreement between our two Governments."

I am authorized to declare that your letter and this reply constitute an agreement between our two Governments.

Accept, Excellency, the assurances of my high consideration.

DAVID B. BOLEN,
Ambassador of the United States of America.

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96TH CONGRESS } SENATE { EXECUTIVE
2d Session } { G

THE FOOD AID CONVENTION, 1980

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE FOOD AID CONVENTION, 1980, ADOPTED BY A CONFERENCE OF GOVERNMENTS AT LONDON ON MARCH 6, 1980, AND OPEN FOR SIGNATURE IN WASHINGTON FROM MARCH 11 THROUGH APRIL 30, 1980

MAY 9, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 4) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 9, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Food Aid Convention, 1980, adopted by a conference of Governments at London on March 6, 1980, and open for signature in Washington from March 11 through April 30, 1980. The report of the Department of State is enclosed for the information of the Senate in connection with its consideration of the Convention.

The Convention replaces the Food Aid Convention, 1971, and together with the Wheat Trade Convention, 1971, constitutes the International Wheat Agreement.

The new Convention commits an increased number of members to provide greater minimum annual quantities of food aid to developing countries. The United States commitment is 4,470,000 metric tons, as compared with a commitment of 1,890,000 metric tons under the 1971 Convention. Either amount is well within the limits provided for by the Agricultural Trade Development and Assistance Act of 1954, P.L. 480, at least through FY 1980. Implementing legislation is therefore unnecessary unless the FY 1981 P.L. 480 budget proves insufficient. The Convention also provides for the consideration of increased food aid during a period of production shortfall in developing countries. However, increased food aid contributions by members would be voluntary, not mandatory.

The Convention will enter into force on July 1, 1980, if by June 30, 1980, the 11 members referred to in Article III have accepted it in accordance with its terms. It will remain in force for one year, provided that the Wheat Trade Convention, 1971, or a new convention replacing it, remains in force for that period. If the Wheat Trade Convention is extended, this Convention may be similarly extended.

I hope that the Senate will give early and favorable consideration to the Food Aid Convention, 1980, so that ratification by the United States can be effected at an early date. Doing so will demonstrate our continued commitment to providing food aid to needy developing nations.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 2, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Food Aid Convention, 1980, adopted by a conference of Governments at London on March 6, 1980, and open for signature in Washington from March 11 through April 30, 1980.

This Convention replaces the current Food Aid Convention, 1971, and is one of two separate legal instruments—the other being the Wheat Trade Convention, 1971—which together constitute the International Wheat Agreement.

This Convention was negotiated over a period of two years, first in Geneva under the auspices of the United Nations Conference on Trade and Development, and then in London under the auspices of the Food Aid Committee, composed of representatives of Governments which are members of the Food Aid Convention, 1971. The new Convention commits members to provide collectively 7,592,000 metric tons of cereals food aid annually to developing countries, as contrasted with 4,226,000 metric tons under the 1971 Convention Under the Convention, the United States is committed to provide 4,470,000 metric tons as contrasted with 1,890,000 metric tons currently. At least through FY 1980, the United States provides considerably more food aid under the Agricultural Trade Development and Assistance Act of 1954, P.L. 480, than the minimum commitment required by either the 1971 or 1980 Convention. Implementing legislation is therefore unnecessary unless the FY 1981 P.L. 480 budget proves insufficient.

A special provision for emergency needs, Article IV, is unique to the new Convention, which provides for the consideration of increased food aid if low income developing countries suffer a substantial food grain production shortfall. However, increased food aid contributions by members would be voluntary, not mandatory.

The new Convention will enter into force on July 1, 1980, if by June 30, 1980, the 11 members referred to in Article III (including the European Economic Community and its nine member states) have accepted it in accordance with its terms. It will remain in force for one year provided the Wheat Trade Convention, 1971, or a new convention replacing it, remains in force for that period. If the Wheat Trade Convention is extended, this Convention may be similarly extended.

The Secretary of Agriculture concurs in my recommendation that the Food Aid Convention, 1980, be submitted to the Senate for advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

FOOD AID CONVENTION, 1980

PART I.—OBJECTIVE AND DEFINITIONS

ARTICLE I.—OBJECTIVE

The objective of this Convention is to secure, through a joint effort by the international community, the achievement in physical terms of the World Food Conference target of at least 10 million tons of food aid annually to developing countries in the form of wheat and other grains suitable for human consumption, and as determined by the provisions of this Convention.

ARTICLE II.—DEFINITIONS

(1) For the purposes of this Convention:

(*a*) "c.i.f." means cost, insurance and freight;

(*b*) "Committee" means the Food Aid Committee referred to in Article V;

(*c*) "Executive Secretary" means the Executive Secretary of the International Wheat Council;

(*d*) "f.o.b." means free on board;

(*e*) "grain" or "grains", unless otherwise stated, means wheat, barley, maize, oats, rye, sorghum and rice, or products derived therefrom, including products of secondary processing, as defined in the Rules of Procedure, subject to the provisions of paragraph (1) of Article III;

(*f*) "member" means a Party to this Convention;

(*g*) "Secretariat" means the secretariat of the International Wheat Council;

(*h*) "ton" means 1,000 kilogrammes;

(*i*) "year" means the period from 1 July to 30 June, unless otherwise stated.

(2) Any reference in this Convention to a "Government" or "Governments" shall be construed as including a reference to the European Economic Community (hereinafter referred to as the EEC). Accordingly, any reference in this Convention to "signature" or to the "deposit of instruments of ratification, acceptance or approval" or "an instrument of accession" or to a "declaration of provisional application" by a Government shall, in the case of the EEC, be construed as including signature or declaration of provisional application on behalf of the EEC by its competent authority, and the deposit of the instrument required by the institutional procedures of the EEC to be deposited for the conclusion of an international agreement.

Part II—Main Provisions

ARTICLE III.—INTERNATIONAL FOOD AID

(1) The members of this Convention agree to contribute as food aid to the developing countries grains, as defined in Article II paragraph (1)(e), suitable for human consumption and of an acceptable type and quality or the cash equivalent thereof, in the minimum annual amounts specified in paragraph (3) below.

(2) To the maximum extent possible, contributions shall be made by members and needs estimated by recipient countries on a forward planning basis, so that recipient countries may be able to take account, in their development programmes, of the likely flow of food aid they will receive during each year of this Convention. Furthermore, members should, to the extent possible, indicate the amount of their contributions to be made in the form of gifts or grants:

(3) The minimum annual contribution of each member towards the achievement of the objective of Article I is as follows:

Member:	Tons
Argentina	35,000
Australia	400,000
Austria	20,000
Canada	600,000
European Economic Community and its member States	1,650,000
Finland	20,000
Japan	300,000
Norway	30,000
Sweden	40,000
Switzerland	27,000
United States of America	4,470,000

(4) For the purposes of the operation of this Convention, any member which has acceded to this Convention pursuant to paragraph (2) of Article XVI shall be deemed to be listed in paragraph (3) of this Article together with its minimum contribution as determined under the relevant provisions of Article XVI.

(5) In the case of a member making the whole or part of its contribution in the form of cash, the quantity determined for that member, or that portion of that quantity not contributed in grain, shall be evaluated at prevailing market prices for wheat. For the purposes of this paragraph, the Committee shall annually determine the prevailing market price for the following year on the basis of the average monthly price of wheat for the preceding calendar year. The Committee shall establish a Rule of Procedure for the determination of the average monthly price of wheat. In determining the prevailing market price, the Committee shall pay due consideration to any significant increase or decrease in the annual average price.

(6) The Committee shall establish Rules of Procedure for the purposes of evaluating a member's contribution, committed or shipped. in grain other than wheat, taking into account, where appropriate, the grain content of products and the commercial value of the grain relative to wheat.

(7) Food Aid under this Convention may be supplied on any of the following terms:

(*a*) gifts of grain or gifts of cash to be used to purchase grain for the recipient country;

(*b*) sales for the currency of the recipient country which is not transferable and is not convertible into currency or goods and services for use by the donor members;[1]

(*c*) sales on credit, with payment to be made in reasonable annual amounts over periods of 20 years or more and with interest at rates which are below commercial rates prevailing in world markets;[2]

on the understanding that such aid shall be supplied to the maximum extent possible by way of gifts, especially in the case of least developed countries, low *per capita* income countries and other developing countries in serious economic difficulties.

(8) Grain purchases under paragraph (7) (a) of this Article shall be made from members of the Food Aid Convention, 1980 and the Wheat Trade Convention in force, with preference accorded to developing members of both Conventions, with a view to facilitating exports of, or processing by, developing members of both Conventions. In making purchases it shall be the general aim that the major part of such purchases shall come from developing countries, with priority being given to developing members of the Food Aid Convention. These provisions shall not therefore exclude the purchase of grain from a developing country, not a member of these Conventions. In all purchases under this paragraph, special regard shall be given to the quality, the c.i.f. price advantages and the possibilities of speedy delivery to the recipient country, and the specific requirements of the recipient countries themselves. Cash contributions shall not normally be used in any year to purchase a grain from a country which is the same type of grain as that country has received as bilateral or multilateral food aid during the same year, or during the previous year if the grain so provided is still being used.

(9) Aid transactions under paragraphs (7) and (8) of this Article shall be carried out in a way consistent with the concerns expressed in the FAO Principles of Surplus Disposal and Guiding Lines.

(10) Contributions in the form of grains shall be placed in a f.o.b. forward position by members.

(11) If transport costs beyond the f.o.b. position are borne by donors, these shall be regarded as cash contributions under the Convention over and above the minimum annual amounts specified in paragraph (3) of this Article.

(12) Members may, in respect of their contributions under this Convention, specify a recipient country or countries.

(13) Members may make their contributions through an international organization or bilaterally. However, members shall give full consideration to the advantages of directing a greater proportion of food aid through multilateral channels, in particular the World Food Programme, and shall otherwise act in accordance with the Guidelines and Criteria for Food Aid, approved by the Committee on Food Aid Policies and Programmes of the World Food Programme.

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[1] Under exceptional circumstances an exemption of not more than 10 percent may be granted.

[2] The credit sales agreement may provide for payment of up to 15 percent of principal upon delivery of the grain.

(14) In the case of the inability of a member to fulfill its obligations under this Convention in any one year, such member shall increase its commitments or shipments, as appropriate, in the following year by the residual amount remaining from the preceding year.

ARTICLE IV.—SPECIAL PROVISION FOR EMERGENCY NEEDS

If in any year there is a substantial food grain production shortfall in the low income developing countries as a whole, the Chairman of the Committee, after considering information received from the Executive Secretary, shall call a session of the Committee to consider the seriousness of the production shortfall. The Committee may recommend that members should respond to the situation by increasing the amount of food aid available.

ARTICLE V.—FOOD AID COMMITTEE

There shall be established a Food Aid Committee whose membership shall consist of all parties to this Convention. The Committee shall appoint a Chairman and a Vice-Chairman.

ARTICLE VI.—POWERS AND FUNCTIONS OF THE COMMITTEE

(1) The Committee shall:

(*a*) receive from members, and members shall provide, regular reports on the amount, content, channelling and terms of their contributions under this Convention;

(*b*) keep under review the purchase of grains financed by cash contributions with particular reference to the obligation in paragraph (8) of Article III concerning purchases of grain from developing countries;

(*c*) examine the way in which the obligations undertaken under this Convention have been fulfilled; and

(*d*) exchange information on a regular basis on the functioning of the food aid arrangements under this Convention, in particular, where information is available, on its effects on food production in recipient countries.

The Committee shall report as necessary.

(2) For the purposes of Article IV and sub-paragraphs 1(c) and 1(d) of this Article the Committee may receive information from recipient countries and may consult with them.

(3) The Committee shall establish such rules of procedure as are necessary to carry out the provisions of this Convention.

(4) In addition to the powers and functions specified in this Article, the Committee shall have such other powers and perform such other functions as are necessary to carry out the provisions of this Convention.

ARTICLE VII.—SEAT, SESSIONS AND QUORUM

(1) The seat of the Committee shall be London, unless the Committee decides otherwise.

(2) The Committee shall meet at least twice a year in conjunction with the statutory sessions of the International Wheat Council. The

Committee shall meet also at such other times as the Chairman shall decide; or at the request of three members; or as otherwise required by this Convention.

(3) The presence of delegates representing two-thirds of the membership of the Committee shall be necessary to constitute a quorum at any session of the Committee.

ARTICLE VIII.—DECISIONS

The decisions of the Committee shall be reached by consensus.

ARTICLE IX.—ADMISSION OF OBSERVERS

The Committee may, when appropriate, invite representatives of the secretariats of other international organizations, whose membership is limited to governments that are members of the United Nations, or its specialized agencies, to attend its sessions as observers.

ARTICLE X.—ADMINISTRATIVE PROVISIONS

The Committee shall use the services of the Secretariat for the performance of such administrative duties as the Committee may request, including the processing and distribution of documentation and reports.

ARTICLE XI.—DEFAULTS AND DISPUTES

In the case of a dispute concerning the interpretation or application of this Convention, or of a default in obligations under this Convention, the Committee shall meet and take appropriate action.

PART III—FINAL PROVISIONS

ARTICLE XII.—SIGNATURE

This Convention shall be open for signature in Washington from 11 March 1980 until and including 30 April 1980 by the Governments referred to in paragraph (3) of Article III.

ARTICLE XIII.—DEPOSITARY

The Government of the United States of America shall be the depositary of this Convention.

ARTICLE XIV.—RATIFICATION, ACCEPTANCE OR APPROVAL

This Convention shall be subject to ratification, acceptance or approval by each signatory Government in accordance with its constitutional procedures. Instruments of ratification, acceptance or approval shall be deposited with the depositary not later than 30 June 1980, except that the Committee under the Food Aid Convention, 1971, as extended, or the Committee under this Convention may grant one or more extensions of time to any signatory Government that has not deposited its instrument of ratification, acceptance or approval by that date.

ARTICLE XV.—PROVISIONAL APPLICATION

Any signatory Government may deposit with the depositary a declaration of provisional application of this Convention. Any such Government shall provisionally apply this Convention and be provisionally regarded as a party thereto.

ARTICLE XVI.—ACCESSION

(1) This Convention shall be open for accession by any Government referred to in paragraph (3) of Article III that has not signed this Convention. Instruments of accession shall be deposited with the depositary not later than 30 June 1980, except that the Committee under the Food Aid Convention, 1971, as extended, or the Committee under this Convention may grant one or more extensions of time to any Government that has not deposited its instrument of accession by that date.

(2) Once this Convention has entered into force in accordance with Article XVII of this Convention, it shall be open for accession by any Government other than those referred to in paragraph (3) of Article III, upon such conditions as the Committee considers appropriate. Instruments of accession shall be deposited with the depositary.

(3) Any Government acceding to this Convention under paragraph (1) or paragraph (2) of this Article may deposit with the depositary a declaration of provisional application of this Convention pending the deposit of its instrument of accession. Any such Government shall provisionally apply this Convention and be provisionally regarded as a party thereto.

ARTICLE XVII.—ENTRY INTO FORCE

(1) This Convention shall enter into force on 1 July 1980, if by 30 June 1980 the Governments referred to in paragraph (3) of Article III have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, and provided that the 1979 Protocol for the fifth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, is in force.

(2) If this Convention does not enter into force in accordance with paragraph (1) of this Article, the Governments which have deposited instruments of ratification, acceptance, approval or accession, or declarations of provisional application, may decide by unanimous consent that it shall enter into force among themselves provided that the 1979 Protocol for the fifth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, is in force, or may take whatever other action they consider the situation requires.

ARTICLE XVIII.—DURATION AND EXTENSION

(1) This Convention shall remain in force until and including 30 June 1981, provided that the 1979 Protocol for the fifth extension of the Wheat Trade Convention, 1971, or a new Wheat Trade Convention replacing it, remains in force until and including that date.

(2) If the Wheat Trade Convention, 1971 is further extended, or if a new Wheat Trade Convention replacing it enters into force, the Committee may extend this Convention for the period of extension of the Wheat Trade Convention, 1971, or for the duration of the new Wheat Trade Convention replacing it. At the time of such extension of this Convention, a member which does not wish to participate in this Convention, as extended, may withdraw therefrom by giving written notice of withdrawal to the depositary. Such member shall inform the Committee accordingly, but shall not be released from any obligations under this Convention which have not been discharged.

ARTICLE XIX.—RELATIONSHIP OF THIS CONVENTION TO THE INTERNATIONAL WHEAT AGREEMENT, 1971, AS EXTENDED

This Convention shall replace the Food Aid Convention, 1971, as extended and shall be one of the constituent instruments of the International Wheat Agreement, 1971, as extended.

ARTICLE XX.—AUTHENTIC TEXTS

The texts of this Convention in the English, French, Russian and Spanish languages shall all be equally authentic. The originals shall be deposited in the archives of the depositary, which shall transmit certified copies thereof to each signatory and acceding Government.

In Witness Whereof the undersigned, having been duly authorized to this effect by their respective Governments or authorities, have signed this Convention on the dates appearing opposite their signatures.

I certify that the foregoing is the authentic English text of the Food Aid Convention, 1980.

J. H. Parotte,
Executive Secretary, International Wheat Council.

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NOTICE: In lieu of a star print, errata are printed to indicate corrections to the original treaty

96th Congress } SENATE { Executive
2d Session } { H

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL, ADOPTED AT A VIENNA MEETING OF GOVERNMENT REPRESENTATIVES ON OCTOBER 26, 1979, AND WAS SIGNED BY THE UNITED STATES ON MARCH 3, 1980

May 9, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

Errata

Page (v), delete line 5 in the text of the letter of submittal, and insert the following: "sentatives on October 26, 1979, and was signed by the United States on March 3, 1980, the date on which it opened for signature."

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82-014 O—82——1 (Pt. 5) BLR

96TH CONGRESS
2d Session

SENATE

EXECUTIVE
H

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 9, 1980.*

To the Senate of the United States:

I submit herewith, for Senate advice and consent to ratification, the Convention on the Physical Protection of Nuclear Material. This Convention was adopted at a Vienna meeting of government representatives on October 26, 1979, and was signed by the United States on March 3, 1980. The Convention establishes an international framework for improving the physical protection of nuclear material during international transport as well as for international cooperation in recovering stolen nuclear material and in responding to serious offenses involving nuclear material.

The United States has been a leader in the international campaign to prevent the proliferation of nuclear explosive devices. The Congress and I have cooperated in enacting the Nuclear Non-Proliferation Act of 1978 to strengthen this critically important effort.

The Convention on the Physical Protection of Nuclear Material was a United States initiative called for by that Act. It complements our non-proliferation efforts by dealing with threats to nuclear material that may arise from terrorist groups. This is a gap in the current international structure, and I urge the Senate to act expeditiously in giving its advice and consent to ratification. I also transmit herewith, for the information of the Senate, the report of the Department of State concerning the Convention.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 28, 1980.

The PRESIDENT,
The White House.

The PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention on the Physical Protection of Nuclear Material. The Convention was adopted at a Vienna meeting of government representatives on October 3, 1980, the date on which it opened for signature.

The Convention is the result of a United States proposal originally made by the Secretary of State in 1974 in his statement to the United Nations General Assembly. On May 30, 1975, the NPT Review Conference urged that work in this area be undertaken. In February 1976, the United States began informal consultations with a number of governments on a draft which it had prepared. On June 16, 1977, the International Atomic Energy Agency (IAEA) circulated a U.S. draft to all members of the IAEA, and in October 1977 the IAEA General Conference adopted resolution GC(XXI)/Res/350 supporting the efforts underway to drafting a convention.

Meetings of governmental representatives were held in Vienna at IAEA Headquarters from October 31–November 10, 1977, April 10–20, 1978, February 5–16, 1979, and October 15–26, 1979. Informal consultations between governmental representatives took place September 4–7, 1978 and September 24–25, 1979.

On October 26, 1979, the negotiation of the Convention was successfully concluded, the text was adopted and representatives signed the Final Act of the meeting. Representatives of 58 states and one organization participated in the negotiations. In addition, there were four observer states and one observer organization. The text, as finally adopted, was agreed to by consensus.

Although the United States initiative leading to the Convention predates the Nuclear Non-Proliferation Act of 1978 (NNPA), the Convention does, in fact, contain provisions covering key elements called for by the Act.

Section 203 of the NNPA, 22 U.S.C. 3243, calls upon the United States to seek to negotiate with other nations and groups of nations to "establish international procedures to be followed in the event of diversion, theft or sabotage of nuclear materials or sabotage of nuclear facilities, and for recovering nuclear materials that have been lost or stolen. . . ."

Section 403 of the NNPA, 42 U.S.C. 2153b, provides that the President shall take immediate and vigorous steps to keep agreement from all nations and groups of nations that "adequate physical security will be established and maintained with respect to all nuclear activities within the territories of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards."

During the negotiation of the Convention, the United States sought such provisions, and the Convention as adopted contains provisions covering key elements of those called for.

Article 2 provides that the Convention applies to nuclear material used for peaceful purposes. It makes clear that Articles 3 and 4 and paragraph 3 of Article 5 apply only to international nuclear transport, while the remainder of the provisions also apply more broadly to nuclear material while in domestic use, storage and transport. Paragraph 3 of Article 2 was inserted to reassure states that apart from those domestic commitments expressly set forth, the Convention does not affect a state's right to regulate domestic use, storage and transport of nuclear material.

Under Article 3, each state party is required to take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction and engaged in transport to or from that state, is protected at levels of protection set forth for different categories of material in Annex I to the Convention. This provision will be implemented in the United States by appropriate regulations.

Article 4 of the Convention requires each state party not to export or authorize the export of nuclear material unless it has received assurances that such material will be protected during international nuclear transport at the levels of protection provided for in Annex I. Where the exporting state is not a party to the Convention but the importing state is, this responsibility falls on the importing state. Where neither the exporting nor the importing state is a party, it becomes the obligation of a state party that is transited by land or internal waterway or whose airports or seaports are entered to receive these assurances as far in advance as practicable. The state party responsible for receiving assurances is to identify and inform in advance states which the nuclear material is expected to transit by land or internal waterway or whose airports or seaports it is expected to enter. These obligations will be implemented in the United States through regulatory and procedural changes.

Article 5 provides a framework for international cooperation in the recovery and protection of stolen nuclear material. Each state party is required to identify and make known to each other its central authority and point of contact for physical protection of nuclear material and coordinating recovery and response operations. In the event of theft, robbery or any unlawful taking of nuclear material or credible threat thereof, states parties, in accordance with their national law, agree to provide cooperation and assistance to the maximum extent feasible in the recovery and protection of such material to any state that so requests. Such cooperation and assistance can include informing other concerned states, exchanging information, verifying the integrity of shipping containers, coordinating efforts through diplomatic and other agreed channels, rendering other requested assistance, and ensuring the return of stolen or missing material. States parties are to cooperate and consult as appropriate, either directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport. In this connection, pursuant to section 202 of the NNPA, it may be noted that the Department of Energy has established a safeguards and physical security training program for foreign persons concerned with these matters. The obligations in Article 5 can be met by the concerned federal agencies without changes in law or regulation.

Article 6 deals with the protection of information. It provides that appropriate measures consistent with national law will be taken to protect the confidentiality of any information received in confidence under the terms of the Convention. It further provides that states shall not be required to provide information they are not permitted to communicate pursuant to national law or which would jeopardize the security of the state concerned or the physical protection of nuclear material. These provisions require no change in United States law.

Articles 7–14 define certain serious offenses involving nuclear material which states parties are to make punishable and for which offenders would be subject to a system of extradition or submission for prosecution. These provisions parallel those under a number of other conventions, such as the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons Including Diplomatic Agents, to which the United States is a party. The Administration will propose appropriate implementing legislation for these provisions, which should be enacted prior to the deposit by the United States of its instrument of ratification for the Convention.

Under Article 7, each state party shall make punishable under its national law such acts as theft or robbery of nuclear material, embezzlement or fraudulent obtaining of nuclear material, demanding nuclear material by threat or force or other form of intimidation, and

Under Article 8, each state party shall establish its jurisdiction over these offenses when committed in the territory of that state or on board a ship or aircraft registered in that state, when the alleged offender is a national of that state, or when the offender is present in its territory and that state does not extradite him to one of the foregoing states.

Under Article 9, upon being satisfied that the circumstances so warrant, the state party in whose territory the alleged offender is present shall take appropriate measures under its national law to insure his presence for the purpose of prosecution or extradition.

Article 10 requires that that state in which the alleged offender is present, if it does not extradite him, to submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution.

Article 11 regulates extradition relations between states parties concerning offenses listed in Article 7. Article 12 guarantees alleged offenders fair treatment at all stages of the proceedings. Article 13 requires states parties to afford one another the greatest measure of assistance in criminal proceedings brought in respect to offenses set forth in Article 7. Article 14 provides for the exchange of relevant information concerning these matters.

The Convention was opened for signature in New York and Vienna on March 3, 1980 (Article 18). A special provision permits the European Atomic Energy Community to become a party (paragraph 4 of Article 18). The Convention enters into force on the 30th day following the date of deposit of the 21st instrument of accession (Article 19), and for each individual state adhering after that date, 30 days after the deposit of its instrument. A procedure for amendment of the Convention is provided (Article 20). A state party may denounce the Convention by written notice, effective 180 days following the date notice is received by the depository (Article 21). In any event, there will be a review conference five years after entry into force, and at five year intervals thereafter if a majority of parties so desire (Article 16). Disputes concerning the interpretation or application of the Convention are to be submitted to arbitration or referred to the International Court of Justice for decision, except if a state party declares that it does not consider itself bound by either or both of these procedures (Article 17).

The depositary of the Convention is the IAEA (Article 23), which has the duty of notifying all states of all significant developments concerning the Convention (Article 22).

The U.S. delegation to the conference at which this Convention was negotiated was led by the Department of State and included representatives of the Departments of Energy and Defense, the Nuclear Regulatory Commission and the Arms Control and Disarmament Agency. All of these agencies have approved the Convention.

I recommend that you transmit this Convention to the Senate with the recommendation that it be approved at an early date.

Respectfully submitted.

CYRUS VANCE.

CERTIFICATION

I certify that this is a true copy of the Convention on the Physical Protection of Nuclear Material, which shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency and at the Headquarters of the United Nations in New York from 3 March 1980, and shall be deposited thereafter with the Director General of the International Atomic Energy Agency.

Vienna, February 1, 1980.

L. W. HERRON,
Director, Legal Division
(For Director General).

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Vienna, February 1980.

L. W. Herron
Edmund Lloyd, Ambassador
(For Director General)

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL

The States Parties to This Convention,

Recognizing the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

Convinced of the need for facilitating international co-operation in the peaceful application of nuclear energy,

Desiring to avert the potential dangers posed by the unlawful taking and use of nuclear material,

Convinced that offences relating to nuclear material are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures to ensure the prevention, detection and punishment of such offences,

Aware of the Need for international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material,

Convinced that this Convention should facilitate the safe transfer of nuclear material,

Stressing also the importance of the physical protection of nuclear material in domestic use, storage and transport,

Recognizing the importance of effective physical protection of nuclear material used for military purposes, and understanding that such material is and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

Article 1

For the purposes of this Convention:

(*a*) "nuclear material" means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotopes 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;

(*b*) "uranium enriched in the 235 or 233" means uranium containing the isotopes 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;

(*c*) "international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination.

Article 2

1. The Convention shall apply to nuclear material used for peaceful purposes while in international nuclear transport.

2. With the exception of articles 3 and 4 and paragraph 3 of article 5, this Convention shall also apply to nuclear material used for peaceful purposes while in domestic use, storage and transport.

3. Apart from the commitments expressly undertaken by States Parties in the articles covered by paragraph 2 with respect to nuclear material used for peaceful purposes while in domestic use, storage and transport, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State regarding the domestic use, storage and transport of such nuclear material.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their central authority and point of contact having responsibility for physical protection of nuclear material and for co-ordinating recovery and response operations in the event of any unauthorized removal, use or alteration of nuclear material or in the event of credible threat thereof.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or of credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(*a*) a State Party shall take appropriate steps to inform as soon as possible other States, which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof and to inform, where appropriate, international organizations;

(*b*) as appropriate, the States Parties concerned shall exchange information with each other or international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container, or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of nuclear material stolen or missing as a consequence of the above-mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. States Parties shall co-operate and consult as appropriate, with each other directly or through international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations in confidence, steps shall be taken to ensure that the confidentiality of such information is protected.

2. States Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material.

Article 7

1. The intentional commission of:

(*a*) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property;

(*b*) a theft or robbery of nuclear material;

(*c*) an embezzlement or fraudulent obtaining of nuclear material;

(*d*) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(*e*) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial property damage, or

(ii) to commit an offense described in subparagraph (b) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(*f*) an attempt to commit any offense described in paragraphs (a), (b) or (c); and

(*g*) an act which constitutes participation in any offense described in paragraphs (a) to (f)

shall be made a punishable offense by each State Party under its national law.

2. Each State Party shall make the offenses described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offenses set forth in article 7 in the following cases:

(*a*) when the offense is committed in the territory of that State or on board a ship or aircraft registered in that State;

(*b*) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offenses in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the State Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offenses set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the

States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

Article 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the puropse of prosecution, through proceedings in accordance with the laws of that State.

Article 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences as extraditable offenses in every future extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offenses set forth in article 7 shall be guaranteed fair treatment at all stagqs of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offenses set forth in article 7, including the supply of evidence at their disposal necessary for the proceedings. The law of the State requested shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.

2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.

3. Where an offence involves nuclear material used for peaceful purposes in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offense.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of this Convention to review the implementation of the Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.

2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.

2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.

3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.

4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.

2. This Convention is subject to ratification, acceptance or approval by the signatory States.

3. After its entry into force, this Convention will be open for accession by all States.

4. (*a*) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(*b*) In matters within their competence, such organizations shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties.

(*c*) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(*d*) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted at the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of th

amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

(d) any communication made by an organization in accordance with paragraph 4(c) of article 18;

(e) the entry into force of this Convention;

(f) the entry into force of any amendment to this Convention; and

(g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

ANNEX I

LEVELS OF PHYSICAL PROTECTION TO BE APPLIED IN INTERNATIONAL TRANSPORT OF NUCLEAR MATERIAL AS CATEGORIZED IN ANNEX II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:

(*a*) For Category III materials, storage within an area to which access is controlled;

(*b*) For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;

(*c*) For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.

2. Levels of physical protection for nuclear material during international transport include:

(*a*) For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;

(*b*) For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;

(*c*) For natural uranium other than in the form of ore or ore-residue, transportation protection for quantities exceeding 500 kilograms U shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention, opened for signature at Vienna and at New York on 3 March 1980.

ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

		Category		
Material	Form	I	II	III[3]
1. Plutonium[1]	Unirradiated[2]	2 kg or more	Less than 2 kg but more than 500 g.	500 g or less but more than 15 g.
2. Uranium-235	Unirradiated[2]:			
	—uranium enriched to 20% U^{235} or more	5 kg or more	Less than 5 kg but more than 1 kg.	1 kg or less but more than 15 g.
	—uranium enriched to 10% U^{235} but less than 20%		10 kg or more	Less than 10 kg but more than 1 kg.
	—uranium enriched above natural, but less than 10% U^{235}.			10 kg or more.
3. Uranium-233	Unirradiated[2]	2 kg or more	Less than 2 kg but more than 500 g.	500 g or less but more than 15 g.
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content).[4] [5]	

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[1] All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

[2] Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 100 rads/hour at one metre unshielded.

[3] Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

[4] Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

[5] Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 100 rads/hour at one metre unshielded

96TH CONGRESS }
2d Session }

SENATE

{ EXECUTIVE
{ I

TAX CONVENTION WITH THE REPUBLIC OF CYPRUS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (THE CONVENTION), TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT NICOSIA ON MARCH 26, 1980

MAY 16, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 16, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Convention between the Government of the United States of America and the Government of the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, together with a related exchange of notes, signed at Nicosia on March 26, 1980. For the information of the Senate, I also transmit the report of the Department of State with respect to the Convention.

The Convention generally follows the pattern of the United States model income tax convention, with certain departures to accommodate aspects of Cypriot law. In addition, special provisions included in the Convention assure that any concessions granted by the United States accrue to the benefit only of residents of Cyprus and not to third country residents.

The Convention also provides that the business profits of a resident of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. In addition, an individual who is a resident of one state may be taxed by the other state on income from personal services performed in the other if certain tests are met relating to the nature of his preference in that other country.

I recommend that the Senate give early and favorable consideration to the Convention and advice and consent to its ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, April 17, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Republic of Cyprus for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (the Convention), together with a related exchange of notes, signed at Nicosia on March 26, 1980.

The Convention generally follows the pattern of the United States model income tax convention, with certain departures intended to accommodate aspects of Cypriot law. For example, under Cypriot law, non-Cypriot individuals and corporations are entitled to certain tax benefits if they operate outside of Cyprus through a Cypriot base. The Convention has, by the inclusion of special provisions, been designed to assure that any concessions granted by the United States accrue to the benefit only of residents of Cyprus and not to third country residents.

Under the Convention, the business profits of a resident of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. Similarly, an individual who is a resident of one state may be taxed by the other on income from personal services performed in the other only if certain tests are met relating to the nature of his presence in that other country.

The Convention establishes maximum rates of tax which may be imposed by the source country on dividends and interest paid to residents of the other country.

The rules with respect to dividends are not reciprocal because of underlying differences in the taxation of corporations and their shareholders in the two countries. The United States withholding tax on dividends paid to residents of Cyprus is limited to 15 percent, except that the maximum rate applicable to dividends paid by a subsidiary to its parent corporation is 5 percent. The Cypriot tax on dividends paid to a resident of the United States may not exceed the tax imposed with respect to the underlying corporate profits out of which the dividends are paid. If the dividend recipient is an individual, he may be entitled to a refund to the extent that his Cypriot tax liability, at ordinary rates, is less than the tax imposed at the corporate level.

Except for certain classes of interest which are exempt at the source, interest may be taxed by the source country at a maximum rate of 10 percent. The exemptions are for: (1) interest received, insured or guaranteed by a Contracting State or instrumentality, (2) interest received by a bank or other financial institution, and (3) interest paid on loans made in connection with sales of goods or services.

Royalties are reciprocally exempt from tax at the source.

The right of the source country to tax capital gains is somewhat broader in this Convention than in the United States model. In addition to source taxation of gains on real property and business property of a permanent establishment, the country in which real property is situated may also tax gains on the sale or other disposition of ownership interests in entities whose assets consist principally of such real property.

The Convention contains the usual rules relating to real property income, students, pensioners and government employees, nondiscrimination and administrative cooperation. It also includes a provision dealing with directors' fees.

The exchange of notes provides that the United States will reopen discussion with Cyprus when it becomes feasible to do so, with a view to incorporating provisions into the Convention in response to Cyprus' interest in promoting United States investment in Cyprus.

The Convention will enter into force upon the exchange of the instruments of ratification. The provisions shall have effect with respect to income of calendar years or taxable years beginning (or in the case of taxes payable at the source, payments made) on or after the first day of January of the year next following the year in which the Convention enters into force.

A technical memorandum explaining the provisions in detail will be prepared by the Department of the Treasury and submitted to the Senate Foreign Relations Committee.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of this Convention. It has the approval of both Departments.

Respectfully submitted,

CYRUS VANCE.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Republic of Cyprus, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

Article 1

TAXES COVERED

(1) The taxes which are the subject of this Convention are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations, but excluding the accumulated earnings tax and the personal holding company tax (the United States tax). The excise tax imposed on insurance premiums paid to foreign insurers is covered, however, only to the extent that the foreign insurer does not reinsure such risks with a person not entitled to exemption from such tax under this or another convention.

(b) In the case of Cyprus, The Income Tax and The Special Contribution (the Cypriot Tax).

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 7 (Non-Discrimination), this Convention shall also apply to taxes of every kind imposed at the national state, or local level. For the purpose of Article 28 (Exchange of Information), this Convention shall also apply to taxes of every kind imposed at the national level.

Article 2

GENERAL DEFINITIONS

(1) In this Convention, unless the context otherwise requires:

(a) The term "United States" means the United States of America and when used in a geographical sense includes the states thereof and the District of Columbia, the territorial waters of the United States, and any area outside the states and the District of Columbia which in accordance with international law and the laws of the United States is an area within which the rights of the United States with respect to the natural resources of the seabed and subsoil may be exercised;

(b) The term "Cyprus" means the Republic of Cyprus and when used in a geographical sense includes the territorial waters of Cyprus and any area outside Cyprus which in accordance with international law and the laws of Cyprus is an area within which the rights of Cyprus with respect to the natural resources of the seabed and subsoil may be exercised;

(c) The term "Contracting State" means the United States or Cyprus, as the context requires;

(d) The term "person" includes an individual, a partnership, a corporation, an estate, a trust, or any other body of persons;

(e) (i) The term "United States corporation" or "corporation of the United States" means a corporation which is created or organized under the laws of the United States or any state thereof or of the District of Columbia, or any unincorporated entity treated as a United States corporation for United States tax purposes; and

(ii) The term "Cypriot corporation" or "corporation of Cyprus" means an entity (other than a United States corporation) treated as a body corporate for tax purposes under the laws of Cyprus, which is resident in Cyprus for the purposes of Cypriot tax;

(f) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate; and

(ii) In the case of Cyprus, the Minister of Finance or his authorized representative;

(g) The term "State" means any National State, whether or not a Contracting State;

(h) The term "international traffic" means any transport by ship or aircraft, except where such transport is solely between places in the other Contracting State;

(i) The reference to a rate of tax or tax burden which is "substantially less than" means less than 50 percent of.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of a Contracting State is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of a Contracting State, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purpose of this Convention.

Article 3

FISCAL RESIDENCE

(1) In this Convention:

(a) The term "resident of Cyprus" means:

(i) A Cypriot corporation; and

(ii) Any person (except a corporation) resident in Cyprus for the purposes of its tax, but in the case of income derived or paid by a partnership, estate, or trust this term applies only to the extent that the income derived by such person is subject to Cypriot tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries.

(b) The term "resident of the United States" means:

(i) A United States corporation; and

(ii) A United States citizen and any person (except a corporation) resident in the United States for the purposes of its tax, but in the case of income derived or paid by a partnership, estate, or trust this term applies only to the extent that the income derived by such person is subject to United States tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closer (center of vital interests);

(b) If his center of vital interests is in neither of the Contracting States or cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has a habitual abode;

(c) If he has a habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting States of which he is a citizen; and

(d) If he is a citizen of both Contracting States or of neither Contracting State the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Subject to the provisions of pararaph 1(b) of Article 21 (Students and Trainees), an individual who is deemed to be a resident of a Contracting State and not a resident of the other Contracting State by reason of the provisions of paragraph (2) shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of this Convention, including Article 4 (General Rules of Taxation).

(4) Where by reason of the provisions of paragraph (1) a person other than an individual or a corporation is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

Article 4

GENERAL RULES OF TAXATION

(1) A resident of a Contracting State may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deducation, credit, or other allowance now or hereafter accorded:

(a) By the laws of a Contracting State in the determination of the tax imposed by that Contracting State; or

(b) By any other agreement between the Contracting States.

(3) Notwithstanding any provisions of this Convention except paragraph (4) of this Article, a Contracting State may tax a citizen or resident of that Contracting State as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss.

(4) The provisions of paragraph (3) shall not affect:

(a) The benefits conferred by a Contracting State under Articles 5 (Relief from Double Taxation), 7 (Non-Discrimination), 24 (Social Security Payments), and 27 (Mutual Agreement Procedure); and

(b) The benefits conferred by a Contracting State under Articles 21 (Students and Trainees) and 22 (Governmental Functions) upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(5) Where, pursuant to any provision of this Convention, a Contracting State reduces the rate of tax on, or exempts, income of a resident of the other Contracting State and under the law in force in that other Contracting State the resident is subject to tax by that other Contracting State only on that part of such income which is remitted to or received in that other Contracting State, then the reduction or exemption shall apply only to so much of such income as is remitted to or received in that other Contracting State during the calendar year such income is paid or the next succeeding calendar year.

(6) Where, pursuant to any provision of this Convention other than paragraph 1 of Article 23 (Private Pensions and Annuities), a Contracting State reduces the rate of tax on, or exempts, income of a person (other than a corporation) who is a resident of the other Contracting State and under the law in force in that other Contracting State such income is subject to a rate of tax or tax burden which is substantially less than the tax which generally would be imposed by that Contracting State on such income if derived from sources within that Contracting State, then the reduction of exemption to be allowed under this Convention in the first-mentioned Contracting State shall not apply.

Article 5

RELIEF FROM TAXATION

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the principles hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of the Cypriot tax. However, no such credit shall be allowed with respect to dividends paid by a Cypriot corporation to a resident of the United States, other than a United States corporation owning at least 10 percent of the voting power of such Cypriot corporation. In the case of such a United States corporation, the United States shall allow as a credit against the United States tax on income the appropriate amount of

the Cypriot tax paid by the Cypriot corporation with respect to the profits out of which the dividends are paid to the United States corporation. Where a credit is allowed pursuant to this paragraph, such appropriate amount shall be based upon the amount of the Cypriot tax paid, but the credit shall not exceed the limitations provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid to Cyprus, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

(2) In accordance with the provisions and subject to the limitations of the law of Cyprus (as it may be amended from time to time without changing the principles hereof), Cyprus shall allow to a citizen or resident of Cyprus as a credit against the Cypriot tax the appropriate amount of the United States tax and, in the case of a Cypriot corporation owning at least 10 percent of the voting power of a United States corporation from which it received dividends in any taxable year, shall allow credit for the appropriate amount of the United States tax paid by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of the United States tax paid but shall not exceed that portion of the Cypriot tax, as computed before the credit is given, which is applicable to such item of income. For the purpose of applying the Cypriot credit in relation to taxes paid to the United States, the rules set forth in Article 6 (Source of Income) shall be applied to determine the source of income.

Article 6

SOURCE OF INCOME

For purposes of this Convention:

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State. Notwithstanding the preceding sentence, if the dividends are described in paragraph 4(b) of Article 12 (Dividends), they shall be deemed to be from sources within the United States.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence, and except for interest described in paragraph 7(c) of Article 13 (Interest) which shall be deemed to be from sources within the United States:

(a) If the person paying the interest (whether or not such person is a resident of a Contracting State) has a permanent establishment in a Contracting State in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment; or

(b) If the person paying the interest is a resident of a Contracting State and has a permanent establishment in a State (other than a Contracting State) in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment

such interest shall be deemed to be from sources within the State in which the permanent establishment is situated.

(3) Royalties described in paragraph (2) of Article 14 (Royalties) for the use of, or the right to use, property or rights described in such paragraph shall be treated as income from sources within a Contracting State only to the extent that such royalties are for the use of, or the right to use, such property or rights within the Contracting State.

(4) Income from real property (including royalties), described in Article 15 (Income from Real Property), shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal (movable) property shall be treated as income from sources within a Contracting State only if such property is used in that Contracting State.

(6) Income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Notwithstanding the preceding sentence, income from personal services performed aboard ships or aircraft operated by a resident of a Contracting State in international traffic shall be treated as income from sources only within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. For the purposes of this paragraph, income from labor or personal services includes pensions (as defined in paragraph (3) of Article 23 (Private Pensions and Annuities)) paid in respect of such services. Notwithstanding the preceding provisions of this paragraph:

(a) Remuneration described in Article 22 (Governmental Functions) and payments described in Article 24 (Social Security Payments) shall be treated as income from sources within a Contracting State only if paid by or from the public funds of that Contracting State or a political subdivision or local authority thereof; and

(b) The portion of directors' fees taxable in a Contracting State under Article 20 (Directors' Fees) shall be treated as income from sources within such Contracting State.

(7) Income from the purchase and sale of intangible or tangible personal (including movable) property (other than gains defined as royalties by paragraph (2)(b) of Article 14 (Royalties)) shall be treated as income from sources within a Contracting State only if such property is either sold in that Contracting State or is property described in paragraph (1)(b) or (c) of Article 16 (Capital Gains) and the real property is located in that Contracting State.

(8) Notwithstanding paragraphs (1) through (7), industrial or commercial profits which are attributable to a permanent establishment which the recipient, a resident of a Contracting State, has in the other Contracting State, including income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 14 (Royalties)), and capital gains, but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains are effectively connected with such permanent establishment, shall be treated as income from sources within that other Contracting State.

(9) The source of any item of income to which paragraphs (1) through (8) are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding

the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of a Contracting State, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for the purposes of this Convention.

Article 7

NON-DISCRIMINATION

(1) A citizen of a Contracting State shall not be subjected in the other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is in similar circumstances. For purposes of United States taxation, United States citizens who are not resident in the United States and Cypriot citizens who are not resident in the United States are not in similar circumstances.

(2) A permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on similar activities. This paragraph shall not be construed as obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents.

(3) Except where the provisions of paragraph 1 of Article 11 (Related Persons), paragraph 5 of Article 13 (Interest), or paragraph 4 of Article 14 (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Contracting State. For purposes of this paragraph, the term "other disbursements" shall include charges for amounts expended by a resident of a Contracting State for purposes of a resident of the other Contracting State, including a reasonable allocation of executive and general administrative expenses (except to the extent representing the expenses of a type of activity which is not for the benefit of the resident of the other Contracting State, but constitute "stewardship" or "over-seeing" functions undertaken for the first mentioned resident's own benefit as an investor), research and development, and other expenses incurred by such resident for the benefit of a group of related persons including such resident. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Contracting State.

(4) A corporation of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State shall not be subjected in

the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar corporations of the first-mentioned Contracting State are or may be subjected.

Article 8

BUSINESS PROFITS

(1) Industrial or commercial profits of a resident of a Contracting State shall be exempt from tax by the other Contracting State unless such resident is engaged in industrial or commercial activity in that other Contracting State through a permanent establishment situated therein. If such resident is so engaged, tax may be imposed by that other Contracting State on the industrial or commercial profits of such resident but only on so much of such profits as are attributable to the permanent establishment.

(2) Where a resident of a Contracting State is engaged in industrial or commercial activity in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent entity engaged in the same or similar activities under the same or similar conditions.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of a Contracting State in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial activity" includes the conduct of manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services and the rental of tangible personal property. Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

(6)(a) The term "industrial or commercial profits" means income derived from industrial or commercial activity. The term also includes income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 14 (Royalties)), and capital gains but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment which the recipient, being a resident of a Contracting State, has in the other Contracting State, whether or not such income is derived from industrial or commercial activity.

(b) To determine whether property or rights are effectively connected with a permanent establishment, the factors taken into account shall include whether rights or property are used in or held for use in carrying on industrial or commercial activity through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(7) Where industrial or commercial profits include items of income which are dealt with separately in other Articles of this Convention, the provisions of those Articles shall, except as otherwise provided therein, supersede the provisions of this Article.

Article 9

PERMANENT ESTABLISHMENT

(1) For purposes of this Convention, the term "permanent establishment" means a fixed place of business through which a resident of a Contracting State engages in industrial or commercial activity.

(2) The term "fixed place of business" includes but is not limited to:

(a) A branch;

(b) An office;

(c) A factory;

(d) A workshop;

(e) A warehouse;

(f) A store or other sales outlet;

(g) A mine, quarry, or other place of extraction of natural resources; and

(h) A building site or construction or installation project which exists for more than six months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

(e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory auxiliary character, for the resident; or

(f) The maintenance of a building site or construction or installation project which does not exist for more than six months.

(4) A person acting in a Contracting State on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to be a perma-

nent establishment in the first-mentioned Contracting State if such person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of that resident, unless the activities of such person are limited to those mentioned in paragraph (3) which, if exercised through a fixed place of business, would not make the fixed place of business a permanent establishment under the provisions of that paragraph.

(5) A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) The fact that a resident of a Contracting State is a related person (within the meaning of Article 11 (related Persons)) with respect to a resident of the other Contracting State or with respect to a person who engages in industrial or commercial activity in that other Contracting State (whether through a permanent establishment or otherwise) shall not be taken into account in determining whether that resident of the first-mentioned Contracting State has a permanent establishment in that other Contracting State.

(7) The principles set forth in paragraphs (1) through (6) shall be applied in determining for the purposes of this Convention whether there is a permanent establishment in a State other than a Contracting State or whether a person other than a resident of a Contracting State has a permanent establishment in a Contracting State.

Article 10

SHIPPING AND AIR TRANSPORT

(1) Notwithstanding Articles 8 (Business Profits) and 16 (Capital Gains), income which a resident of a Contracting State derives from the operation in international traffic of ships or aircraft, including gains derived from the sale, exchange, or other disposition of such ships or aircraft, shall be exempt from tax by the other Contracting State.

(2) For purposes of this Article, profits from the operation in international traffic of goods or merchandise shall be taxable only in the rental on a full or bareboat basis of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph (1).

(3) Profits of a resident of a Contracting State from the use, maintenance or rental of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that Contracting State.

(4) For purposes of paragraphs (1) and (3) of this Article, a corporation which is a United States corporation or a Cypriot corporation will not be considered to be a resident of the United States or Cyprus, as the case may be, if twenty-five percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting State, to be owned directly or indirectly by one or more per-

sons who are not individual residents of the United States or Cyprus, as the case may be (or, in the case of a Cypriot corporation, who are citizens of the United States). For purposes of this paragraph, a corporation that has substantial trading in its stock on a recognized exchange in a Contracting State is presumed to be owned by individual residents of that Contracting State.

Article 11

RELATED PERSONS

(1) Where a person subject to the taxing jurisdiction of a Contracting State and any other person are related and where such related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) For purposes of this Convention, a person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(3) Where an adjustment has been made by a Contracting State in accordance with paragraph (1), the other Contracting State shall, if it agrees that the adjustment by the first-mentioned Contracting State was in accordance with paragraph (1), make a corresponding adjustment to the income, loss or tax of the related person in that other Contracting State.

In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 12

DIVIDENDS

(1) Dividends derived from sources within Cyprus by a resident of the United States shall not be subject to any tax imposed by Cyprus in excess of the tax imposed with respect to the profits or earnings out of which such dividends are paid. An individual resident of the United States shall be entitled to a refund of any Cypriot tax imposed with respect to the profits or earnings out of which a dividend is paid to the extent that said tax exceeds the individual's tax liability in Cyprus.

(2) The rate of tax imposed by the United States on dividends, other than dividends of the type described in paragraph 4(b), derived from sources within the United States by a resident of Cyprus shall not exceed:

(a) 15 percent of the gross amount of the dividend; or

(b) When the recipient is a corporation, 5 percent of the gross amount of the dividend if:

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation; and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interests is received).

(3) Paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, the provisions of Article 8 (Business Profits) shall apply.

(4) Dividends paid by a corporation of a Contracting State to a person other than a resident of the other Contracting State shall be exempt from tax by the other Contracting State, unless

(a) The recipient of the dividends has a permanent establishment in the other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment; or

(b) The corporation paying the dividends is a Cypriot corporation which derives more than 50 percent of its profits from one or more permanent establishments which such corporation has in the United States and more than 25 percent of the capital of such corporation is owned directly or indirectly by individuals who are not citizens of Cyprus.

Article 13

INTEREST

(1) Interest derived from sources within a Contracting State by a resident of the other Contracting States may be taxed by both Contracting States.

(2) The rate of tax imposed by a Contracting State on interest, other than interest described in paragraph 7(c) of this Article, derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 10 percent of the gross amount of such interest.

(3) Notwithstanding paragraphs (1) and (2), interest beneficially derived by:

(a) A Contracting State, or an instrumentality of that Contracting State not subject to tax by that Contracting State on its income;

(b) A resident of a Contracting State with respect to debt obligations (including any related debt obligations) guaranteed or insured by that Contracting State or an instrumentality thereof;

(c) A bank or other financial institution; or

(d) A resident of a Contracting State with respect to debt obligations arising in connection with the sale of property or the performance of services;

shall be exempt from tax by the other Contracting State.

(4) Paragraphs (2) and (3) shall not apply if the recipient of the interest, being a resident of a Contracting State, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, the provisions of Article 8 (Business Profits) shall apply.

(5) Where any interest paid by a person to any related person (within the meaning of Article 11 (Related Persons)) exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(6) The term "interest" as used in this Convention means income from bonds, debentures, government securities, notes, or other evidences of indebtedness, whether or not secured and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

(7) Interest paid by a resident of a Contracting State to a person other than a resident of the other Contracting State shall be exempt from tax by the other Contracting State, unless:

(a) Such interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 6 (Source of Income);

(b) The recipient of the interest has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment; or

(c) The resident paying the interest is a Cypriot corporation which derives more than 50 percent of its profits from one or more permanent establishments which such corporation has in the United States and more than 25 percent of the capital of such corporation is owned directly or indirectly by individuals who are not citizens of Cyprus.

Article 14

ROYALTIES

(1) Royalties derived from sources within a Contracting State by a resident of the other Contracting State shall be exempt from tax by the first-mentioned Contracting State.

(2) The term "royalties" as used in this Article means:

(a) Payment of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, cinematograph films including films and video tapes for television broadcasting, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or knowledge, experience, or skill (know-how); and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use, or disposition of such property or right.

(3) Paragraph (1) shall not apply if the recipient of the royalties, being a resident of a Contracting State, has a permanent establishment in the other Contracting State and the property or rights giving rise to the royalties are effectively connected with such permanent establishment. In such a case, the provisions of Article 8 (Business Profits) shall apply.

(4) Where any royalty paid by a person to any related person (within the meaning of Article 11 (Related Persons)) exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the royalty as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 15

INCOME FROM REAL PROPERTY

(1) Income from real property, including royalties and other payments in respect to the exploitation of natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties or other payments, may be taxed by the Contracting State in which such real property or natural resources are situated. For purposes of this convention, interest on indebtedness secured by real property or secured by a right giving rise to royalties or other payments in respect of the exploitation of natural resources shall not be regarded as income from real property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property.

(3) A resident of a Contracting State who is subject to tax in the other Contracting State on income from real property, including royalties and other payments in respect of the exploitation of natural resources and gains derived from the sale, exchange or other disposition of such property or of the right giving rise to such royalties, may elect for any taxable year to compute that tax on such income on a net basis as if such resident were engaged in trade or business in the other Contracting State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authorities of the two Contracting States, pursuant to a request by the taxpayer made to the competent authority of the Contracting State in which the taxpayer is a resident, agree to terminate the election.

Article 16

CAPITAL GAINS

(1) A resident of a Contracting State shall be exempt from tax by the other Contracting State on gains from the sale, exchange or other disposition of capital assets unless the gain is derived from the sale, exchange or other disposition of:

(a) Real property situated within the other Contracting State;

(b) Shares of the capital stock of a corporation the property of which consists principally of property described in subparagraph (a);

(c) An interest in a partnership, trust or estate the property of which consists principally of property described in subparagraph (a); or

(d) Property (other than property described in subparagraphs (a), (b) and (c)) forming part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State or property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base.

For purposes of this paragraph, "property described in subparagraph (a)" includes the shares of a corporation, or an interest in a partnership, trust or estate, the property of which consists principally of property described in subparagraph (a).

(2) In the case of gains described in paragraph 1(a), (b), and (c) the provisions of Article 15 (Income from Real Property) shall apply. In the case of gains described in paragraph 1(d) the provisions of Article 8 (Business Profits), or Article 17 (Independent Personal Services) shall apply, as the case may be.

Article 17

INDEPENDENT PERSONAL SERVICES

(1) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity may be taxed by that Contracting State. Except as provided in paragraph (2) such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

(a) The individual is present in that other Contracting State for a period or periods aggregating 183 days or more in the taxable year; or

(b) The individual has a fixed base regularly available to him in that other Contracting State for the purpose of performing his services, but only so much of the income as is attributable to such fixed base.

Article 18

DEPENDENT PERSONAL SERVICES

(1) Wages, salaries, and similar remuneration derived by an individual who is a resident of a Contracting State from labor or personal services performed as an employee, including income from services performed by an officer of a corporation, may be taxed by that Contracting State. Except as provided by paragraph (2), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of a Contracting State shall be exempt from tax by the other Contracting State if:

(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year;

(b) The remuneration is paid by, or on behalf of, an employer who is not a resident of that other Contracting State; and

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State.

(3) Notwithstanding paragraph (2), remuneration derived by an individual from the performance of labor or personal services as an employee aboard ships or aircraft operated by a resident of a Contracting State in international traffic shall be exempt from tax by the other Contracting State if such individual is a member of the regular complement of the ship or aircraft.

Article 19

ARTISTES AND ATHLETES

(1) Notwithstanding the provisions of Articles 17 (Independent Personal Services) and 18 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting State, except where the amount of the gross receipts derived by such entertainer or athlete, not including expenses reimbursed to him or borne on his behalf, from such activities does not exceed five hundred United States dollars or its equivalent in Cypriot pounds per day, or five thousand United States dollars or its equivalent in Cypriot pounds for the taxable year concerned.

(2) To the extent that income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 8 (Business Profits), 17 (Independent Personal Services), and 18 (Dependent Personal Serv-

ices) be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Article 20

DIRECTORS' FEES

Fees derived by a resident of a Contracting State in his capacity as a member of the board of directors of a corporation of the other Contracting State (but not including fixed or contingent payments derived in his capacity as an officer or employee) may, to the extent such fees are in excess of a reasonable fixed amount for each day of attendance payable to all directors of the corporation for attendance at the directors' meeting in such other Contracting State, be taxable in such other Contracting State.

Article 21

STUDENTS AND TRAINEES

(1) (a) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:

(i) Studying at a university or other recognized educational institution in that other Contracting State; or

(ii) Securing training required to qualify him to practice a profession or professional specialty; or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization;

shall be exempt from tax by that other Contracting State for a period not exceeding five taxable years from the date of his arrival in that other Contracting State, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution, with respect to amounts received for the purpose of this maintenance, education or training, to the extent that such payments arise outside that other Contracting State.

(b) An individual to whom subparagraph (a) applies may elect to be treated for all tax purposes, including this Convention, as a resident of the other Contracting State. The election shall apply to the portion of the taxable year of the election and of subsequent taxable years during which the individual qualifies under subparagraph (a). The benefits of subparagraph (a) are not affected by an election made under this subparagraph.

(2) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an

employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

(a) Acquiring technical, professional, or business experience from a person other than a resident of the first-mentioned Contracting State or other than a person related to such resident; or

(b) Studying at a university or other recognized educational institution in that other Contracting State;

shall be exempt from tax by that other Contracting State for a period no exceeding one year with respect to his income from personal services in an aggregate amount not in excess of seven thousand five hundred United States dollars or its equivalent in Cypriot pounds.

(3) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State for a period not exceeding one year, as a participant in a program sponsored by the government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of ten thousand United States dollars or its equivalent in Cypriot pounds.

Article 22

GOVERNMENTAL FUNCTIONS

Wages, salaries, and similar remuneration, including pensions, annuities, or similar benefits, paid from public funds of a Contracting State to a citizen of that Contracting State for labour or personal services performed as an employee of the Contracting State in the discharge of governmental functions shall be exempt from tax by the other Contracting State.

Article 23

PRIVATE PENSIONS AND ANNUITIES

(1) Except as provided in Article 22 (Governmental Functions) pensions and other similar remuneration paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that Contracting State.

(2) Alimony and annuities paid to an individual who is a resident of a Contracting State shall be taxable only in that Contracting State.

(3) The term "pensions and other similar remuneration," as used in this Article, means periodic payments made:

(a) By reason of retirement or death in consideration for services rendered; or

(b) By way of compensation for injuries received in connection with past employment.

(4) The term "annuities", as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(5) The term "alimony", as used in this Article, means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement which is taxable to the

recipient under the internal laws of the Contracting State of which he is a resident.

Article 24

SOCIAL SECURITY PAYMENTS

Social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State or citizen of the United States shall be taxable only in the first-mentioned Contracting State. This Article shall not apply to payments described in Article 22 (Governmental Functions).

Article 25

DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

Article 26

INVESTMENT OR HOLDING COMPANIES

A corporation of a Contracting State deriving dividends, interest, or royalties from sources within the other Contracting State shall not be entitled to the benefits of Article 12 (Dividends), 13 (Interest) or 14 (Royalties) if:

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest or royalties, is substantially less than the tax generally imposed by such Contracting State on corporate profits; or

(b) Twenty-five percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned directly or indirectly by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of a Cypriot corporation, who are citizens of the United States). For purposes of this paragraph, a corporation that has substantial trading in its stock on a recognized exchange in a Contracting State is presumed to be owned by residents of that Contracting State.

Article 27

MUTUAL AGREEMENT PROCEDURE

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident. Should the resident's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to

come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation contrary to the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree:

(a) To the same attribution of income, deductions, credits or allowances of a resident of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits, or allowances between persons, including a uniform position on the application of the requirements of paragraph (2) of Article 7 (Non-Discrimination);

(c) To the same determination of the source of particular items of income;

(d) To a uniform accounting for income and deductions;

(e) To the same characterization of particular items of income; and

(f) To a common meaning of a term.

The competent authorities may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities of the Contracting States reach such an agreement, taxes shall be imposed and refund or credit of taxes shall be allowed by the Contracting States in accordance with such agreement. Such a refund or credit of tax shall be allowed notwithstanding any time limits in the domestic law of the Contracting States.

(5) In cases where this Convention specifies a dollar amount, the competent authorities may agree to a higher dollar amount.

(6) The competent authorities of the Contracting States may prescribe such rules and procedures as are necessary to carry out the purposes of this Convention.

Article 28

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting State shall exchange such information as is pertinent to carrying out the provisions of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative body) concerned with assessment, collection, enforcement, or prosecution in respect of the taxes which are the subject of this Convention.

(2) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned Contracting State were the tax of that other Contracting State and were being imposed by that other Contracting State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other Contracting State with respect to its own taxes.

(3) In no case shall the provisions of paragraph (1) or (2) be construed so as to impose on a Contracting State the obligation:

(a) To carry out administrative measures at variance with the laws or the administrative practice of that Contracting State or the other Contracting State;

(b) To supply particulars which are not obtainable under the laws, or in the normal course of the administration, of that Contracting State or of the other Contracting State; or

(c) To supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

(4) The exchange of information shall be either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the information which shall be furnished on a routine basis.

(5) The competent authorities of the Contracting States shall notify each other of any amendments of the tax laws referred to in paragraph (1) of Article 1 (Taxes Covered) and of the adoption of any taxes referred to in paragraph (2) of Article 1 (Taxes Covered) by transmitting the texts of any amendments or new statutes.

(6) The competent authorities of the Contracting States shall notify each other of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions, by transmitting the texts of any such materials.

Article 29

ASSISTANCE IN COLLECTION

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this Article be construed so as to impose upon a Contracting State the obligation to carry out measures at variance with the laws, administrative practices, or public policy of either Contracting State with respect to the collection of its own taxes.

Article 30

ENTRY INTO FORCE

This Convention shall be ratified and instruments of ratification shall be exchanged at Nicosia, Cyprus as soon as possible. It shall enter into force upon the exchange of the instruments of ratification. The provisions shall for the first time have effect with respect to income of taxable years beginning (or in the case of taxes payable at the source, payments made) on or after the first day of January of the year next following the year in which this Convention enters into force.

Article 31

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which this Convention enters into force provided that at least six months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of calendar years or taxable years beginning (or, in the case of taxes payable at the source, payments made) on or after the first day of January next following the expiration of the six-month period.

Done at Nicosia, Cyprus in duplicate in the English language this 26th Day of March, 1980.

For the United States of America:

GALEN L. STONE.

For the Republic of Cyprus:

G. PELAGHIAS.

NICOSIA, *March 26, 1980.*

His Excellency NICOS ROLANDIS,
Minister of Foreign Affairs, Nicosia.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of Cyprus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income which has been signed on this date. A question arose with respect to which it was deemed appropriate that there be an exchange of Notes recording the agreement reached by the delegations from our two countries.

In view of the expressed interest of Cyprus in promoting investment in Cyprus, it is agreed that at such time as the United States is in a position to do so, discussions will be resumed with a view to incorporating provisions into this Convention that will minimize the interference of the U.S. tax system with incentives offered by the Government of Cyprus and that will be consistent with the income tax policies of the United States government regarding other developing countries.

I have the honor to propose to you that the present Note and your reply thereto constitute the agreement of our two Governments on this point.

Accept, Excellency, the renewed assurances of my highest consideration.

GALEN L. STONE.

No. 80/2744

United States of America

DEPARTMENT OF STATE

[illegible]ll to whom these presents shall come, Greeting:

[illegible] Certify That Arthur W. Rovine,

[illegible]ame is subscribed to the document hereunto annexed, was at the time [illegible]ribing the same Assistant Legal Adviser for Treaty Affairs, Department of State, United States [illegible], and that full faith and credit are due to his acts as such.

In testimony whereof, I, Warren Christopher, Acting Secretary of State, have hereunto caused the seal of the Department of State to be affixed and my name subscribed by the Authentication Officer of the said Department, at the city of Washington, in the District of Columbia, this fourteenth day of May, 1980.

Warren Christopher
Acting Secretary of State.

By
Authentication Officer, Department of State.

[illegible]

This certi[illegible] not valid if it is removed or altered in any way whatsoever

I CERTIFY THAT the foregoing is a true copy of the United States note signed and exchanged by Ambassador Galen L. Stone in Nicosia in connection with the signing on March 26, 1980 of the Convention between the Government of the United States of America and the Government of the Republic of Cyprus for the Avoidance of Fiscal Evasion with Respect to Taxes on Income.

Arthur W. Rovine

Arthur W. Rovine
Assistant Legal Adviser
for Treaty Affairs

REPUBLIC OF CYPRUS
MINISTRY OF FOREIGN AFFAIRS

No. 850/69

Nicosia, March 3I, I980.

Excellency,

I have the honour to refer to your Note No.46 dated March 26, I980 addressed to the Minister of Foreign Affairs which reads as follows:

"Excellency,

I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Republic of Cyprus for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income which has been signed on this date. A question arose with respect to which it was deemed appropriate that there be an exchange of Notes recording the agreement reached by the delegations from our two countries.

In view of the expressed interest of Cyprus in promoting investment in Cyprus, it is agreed that at such time as the United States is in a position to do so, discussions will be resumed with a view to incorporating provisions into this Convention that will minimize the

H.E. The Ambassador of the U.S.A.
Mr. Galen Stone
Nicosia.

interference of the U.S. tax system with incentives offered by the Government of Cyprus and that will be consistent with the income tax policies of the United States government regarding other developing countries.

I have the honor to propose to you that the present Note and your reply thereto constitute the agreement of our two Governments on this point.

Accept, Excellency, the renewed assurances of my highest consideration."

The Government of the Republic of Cyprus agrees with the contents of your Note above and thus this Note together with yours of March 26, I980 constitute the Agreement between our two Governments entering into force on this date of March 3Ist I980.

Accept, Excellency, the assurances of my highest consideration.

Sincerely.

(G. Pelaghias)
Director-General

96th Congress }
2d Session }
SENATE
{ Executive
{ J

INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979, WITH ANNEX

MESSAGE
FROM
THE PRESIDENT OF THE UNITED STATES
TRANSMITTING
THE INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979, WITH ANNEX, ADOPTED AT HAMBURG ON APRIL 27, 1979 BY A CONFERENCE OF REPRESENTATIVES OF 51 NATIONS CONVENED UNDER THE AUSPICES OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO) AND SIGNED ON BEHALF OF THE UNITED STATES ON NOVEMBER 6, 1979

May 20, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 20, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the International Convention on Maritime Search and Rescue, 1979, with Annex, signed on behalf of the United States on November 6, 1979. For the information of the Senate, I transmit also the report of the Department of State with respect to the Convention and a copy of the Final Act of the International Conference on Maritime Search and Rescue, 1979, adopting the Convention.

The Convention provides for the first comprehensive approach to international search and rescue service for world shipping, by establishing a plan to coordinate international facilities for the rescue of persons in distress at sea. It does for the maritime services what the search and rescue provisions of Annex 12 to the Convention on International Civil Aviation do for the aviation services. The Convention will serve to promote cooperation among organizations around the world participating in search and rescue operations at sea.

For these reasons, I urge the Senate to give this Convention prompt consideration, and its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 8, 1980.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the International Convention on Maritime Search and Rescue, 1979, with Annex, adopted at Hamburg on April 27, 1979 by a conference of representatives of 51 nations convened under the auspices of the Inter-Governmental Maritime Consultative Organization (IMCO). The Convention was signed on behalf of the United States on November 6, 1979.

Generally modeled upon Annex 12 to the Convention on International Civil Aviation, the Convention establishes an international maritime search and rescue plan responsive to the needs of maritime traffic for the rescue of persons in distress at sea. The core of the Convention is its technical Annex, establishing in detail mandatory requirements and optional recommendations for the international maritime search and rescue plan. The articles of the Convention contain procedural provisions and the basic undertaking to give full effect to the Convention. The Convention will enter into force 12 months after the date on which 15 States have become parties to it.

No new legislation will be necessary in order to implement the Convention. It has the support of the marine industry and labor, as well as the United States Coast Guard and the Department of State. It is hoped that the Senate will, at an early date, give its advice and consent to ratification of the Convention.

Respectfully submitted.

WARREN CHRISTOPHER,
Acting, Secretary of State.

INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979

The Parties to the Convention,

Noting the great importance attached in several conventions to the rendering of assistance to persons in distress at sea and to the establishment by every coastal State of adequate and effective arrangements for coast watching and for search and rescue services,

Having Considered Recommendation 40 adopted by the International Conference on Safety of Life at Sea, 1960, which recognizes the desirability of co-ordinating activities regarding safety on and over the sea among a number of inter-governmental organizations,

Desiring to develop and promote these activities by establishing an international maritime search and rescue plan responsible to the needs of maritime traffic for the rescue of persons in distress at sea.

Wishing to promote co-operation among search and rescue organizations around the world and among those participating in search and rescue operations at sea,

Have Agreed as follows:

ARTICLE I

GENERAL OBLIGATIONS UNDER THE CONVENTION

The Parties undertake to adopt all legislative or other appropriate measures necessary to give full effect to the Convention and its Annex, which is an integral part of the Convention. Unless expressly provided otherwise, a reference to the Convention constitutes at the same time a reference to its Annex.

ARTICLE II

OTHER TREATIES AND INTERPRETATION

(1) Nothing in the Convention shall prejudice the codification and development of the law of the sea by the United Nations Conference on the Law of the Sea convened pursuant to resolution 2750 (XXV) of the General Assembly of the United Nations nor the present or future claims and legal views of any State concerning the law of the sea and the nature and extent of coastal and flag State jurisdiction.

(2) No provision of the Convention shall be construed as prejudicing obligations or rights of vessels provided for in other international instruments.

ARTICLE III

AMENDMENTS

(1) The Convention may be amended by either of the procedures specified in paragraphs (2) and (3) hereinafter.

(2) Amendments after consideration within the Inter-Governmental Maritime Consultative Organization (hereinafter referred to as the Organization):

(a) Any amendment proposed by a Party and transmitted to the Secretary-General of the Organization (hereinafter referred to as the Secetary-General), or any amendment deemed necessary by the Secretary-General as a result of an amendment to a corresponding provision of Annex 12 to the Convention on International Civil Aviation, shall be circulated to all Members of the Organization and all Parties at least six months prior to its consideration by the Maritime Safety Committee of the Organization.

(b) Parties, whether or not Members of the Organization, shall be entitled to participate in the proceedings of the Maritime Safety Committee for the consideration and adoption of amendments.

(c) Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Maritime Safety Committee on condition that at least one third of the Parties shall be present at the time of adoption of the amendment.

(d) Amendments adopted in accordance with sub-paragraph (c) shall be communicated by the Secretary-General to all Parties for acceptance.

(e) An amendment to an Article or to paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 or 3.1.3 of the Annex shall be deemed to have been accepted on the date on which the Secretary-General has received an instrument of acceptance from two thirds of the Parties.

(f) An amendment to the Annex other than to paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 or 3.1.3 shall be deemed to have been accepted at the end of one year from the date on which it is communicated to the Parties for acceptance. However, if within such period of one year more than one third of the Parties notify the Secretary-General that they object to the amendment, it shall be deemed not to have been accepted.

(g) An amendment to an Article or to paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 or 3.1.3 of the Annex shall enter into force:

(i) with respect to those Parties which have accepted it, six months after the date on which it is deemed to have been accepted;

(ii) with respect to those Parties which accept it after the condition mentioned in sub-paragraph (e) has been met and before the amendment enters into force, on the date of entry into force of the amendment;

(iii) with respect to those Parties which accept it after the date on which the amendment enters into force, 30 days after the deposit of an instrument of acceptance.

(h) An amendment to the Annex other than to paragraphs 2.1.4, 2.1.5, 2.1.7, 2.1.10, 3.1.2 or 3.1.3 shall enter into force with respect to all Parties, except those which have objected to the amendment under sub-paragraph (f) and which have not withdrawn such objections, six months after the date on which it is deemed to have been accepted. However, before the date set for entry into force, any Party may give notice to the Secretary-General that it exempts itself from giving effect to that amendment for a period not longer than one year from the date of its entry into force, or for such longer period as may be determined by a two-thirds majority of the Parties present and voting in the Maritime Safety Committee at the time of the adoption of the amendment.

(3) Amendment by a conference:

(a) Upon the request of a Party concurred in by at least one third of the Parties, the Organization shall convene a conference of Parties to consider amendments to the Convention. Proposed amendments shall be circulated by the Secretary-General to all Parties at least six months prior to their consideration by the conference.

(b) Amendments shall be adopted by such a conference by a two-thirds majority of the Parties present and voting, on condition that at least one third of the Parties shall be present at the time of adoption of the amendment. Amendments so adopted shall be communicated by the Secretary-General to all Parties for acceptance.

(c) Unless the conference decides otherwise, the amendment shall be deemed to have been accepted and shall enter into force in accordance with the procedures specified in sub-paragraphs (2)(e), (2)(f), (2)(g) and (2)(h) respectively, provided that reference in sub-paragraph (2)(h) to the Maritime Safety Committee expanded in accordance with sub-paragraph (2)(b) shall be taken to mean reference to the conference.

(4) Any declaration of acceptance of, or objection to, an amendment or any notice given under sub-paragraph (2)(h) shall be submitted in writing to the Secretary-General who shall inform all Parties of any such submission and the date of its receipt.

(5) The Secretary-General shall inform States of any amendments which enter into force, together with the date on which each such amendment enters into force.

ARTICLE IV

SIGNATURE, RATIFICATION, ACCEPTANCE, APPROVAL AND ACCESSION

(1) The Convention shall remain open for signature at the Headquarters of the Organization from 1 November 1979 until 31 October 1980 and shall thereafter remain open for accession. States may become Parties to the Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

(2) Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General.

(3) The Secretary-General shall inform States of any signature or of the deposit of any instrument of ratification, acceptance, approval or accession and the date of its deposit.

ARTICLE V

ENTRY INTO FORCE

(1) The Convention shall enter into force 12 months after the date on which 15 States have become Parties to it in accordance with Article IV.

(2) Entry into force for States which ratify, accept, approve or accede to the Convention in accordance with Article IV after the condition prescribed in paragraph (1) has been met and before the Convention enters into force, shall be on the date of entry into force of the Convention.

(3) Entry into force for States which ratify, accept, approve or accede to the Convention after the date on which the Convention enters into force shall be 30 days after the date of deposit of an instrument in accordance with Article IV.

(4) Any instrument of ratification, acceptance, approval or accession deposited after the date of entry into force of an amendment to the Convention in accordance with Article III shall apply to the Convention as amended, and the Convention, as amended, shall enter into force for a State depositing such an instrument 30 days after the date of its deposit.

(5) The Secretary-General shall inform States of the date of entry into force of the Convention.

ARTICLE VI

DENUNCIATION

(1) The Convention may be denounced by any Party at any time after the expiry of five years from the date on which the Convention enters into force for that Party.

(2) Denunciation shall be effected by the deposit of an instrument of denunciation with the Secretary-General who shall notify States of any instrument of denunciation received and of the date of its receipt as well as the date on which such denunciation takes effect.

(3) A denunciation shall take one year, or such longer period as may be specified in the instrument of denunciation, after its receipt by the Secretary-General.

ARTICLE VII

DEPOSIT AND REGISTRATION

(1) The Convention shall be deposited with the Secretary-General who shall transmit certified true copies thereof to States.

(2) As soon as the Convention enters into force, the Secretary-General shall transmit the text thereof to the Secretary-General of the United Nations for registration and publication, in accordance with Article 102 of the Charter of the United Nations.

ARTICLE VIII

LANGUAGES

The Convention is established in a single copy in the Chinese, English, French, Russian and Spanish languages, each text being equally authentic. Official translations in the Arabic, German and Italian languages shall be prepared and deposited with the signed original.

Done at Hamburg this twenty-seventh day of April one thousand nine hundred and seventy-nine.

In witness whereof the undersigned, being duly authorized by their respective Governments for that purpose, have signed the Convention.

ANNEX

CHAPTER 1—TERMS AND DEFINITIONS

1.1 "Shall" is used in the Annex to indicate a provision, the uniform application of which by all Parties is required in the interest of safety of life at sea.

1.2 "Should" is used in the Annex to indicate a provision, the uniform application of which by all Parties is recommended in the interest of safety of life at sea.

1.3 The terms listed below are used in the Annex with the following meanings:

.1 "Search and rescue region". An area of defined dimensions within which search and rescue services are provided.

.2 "Rescue co-ordination centre". A unit responsible for promoting efficient organization of search and rescue services and for co-ordinating the conduct of search and rescue operations within a search and rescue region.

.3 "Rescue sub-centre". A unit subordinaate to a rescue coordination centre established to complement the latter within a specified area within a search and rescue region.

.4 "Coast watching unit". A land unit, stationary or mobile, designated to maintain a watch on the safety of vessels in coastal areas.

.5 "Rescue unit". A unit composed of trained presonnel and provided with equipment suitable for the expeditious conduct of search and rescue operations.

.6 "On-scene commander". The commander of a rescue unit designated to co-ordinate search and rescue operations within a specified search area.

.7 "Co-ordinator surface search". A vessel, other than a rescue unit, designated to co-ordinate surface search and rescue operations within a specified search area.

.8 "Emergency phase". A generic term meaning, as the case may be, uncertainty phase, alert phase or distress phase.

.9 "Uncertainty phase". A situation wherein uncertainty exists as to the safety of a vessel and the persons on board.

.10 "Alert phase". A situation wherein apprehension exists as to the safety of a vessel and of the persons on board.

.11 "Distress phase". A situation wherein there is a reasonable certainty that a vessel or a person is threatened by grave and imminent danger and requires immediate assistance.

.12 "To ditch". In the case of an aircraft, to make a forced landing on water.

CHAPTER 2—ORGANIZATION

2.1 *Arrangements for provision and co-ordination of search and rescue services*

2.1.1 Parties shall ensure that necessary arrangements are made for the provision of adequate search and rescue services for persons in distress at sea round their coasts.

2.1.2 Parties shall forward to the Secretary-General information on their search and rescue organization and later alterations of importance, including:

.1 national maritime search and rescue services;

.2 location of established rescue co-ordination centres, their telephone and telex numbers and areas of responsibility; and

.3 principal available rescue units at their disposal.

2.1.3 The Secretary-General shall in a suitable way transmit to all Parties the information referred to in paragraph 2.1.2.

2.1.4 Each search and rescue region shall be established by agreement among Parties concerned. The Secretary-General shall be notified of such agreement.

2.1.5 In case agreement on the exact dimensions of a search and rescue region is not reached by the Parties concerned, those Parties shall use their best endeavours to reach agreement upon appropriate arrangements under which the equivalent overall co-ordination of search and rescue services is provided in the area. The Secretary-General shall be notified of such arrangements.

2.1.6 The Secretary-General shall notify all Parties of the agreements or arrangements referred to in paragraphs 2.1.4 and 2.1.5.

2.1.7 The delimitation of search and rescue regions is not related to and shall not prejudice the delimitation of any boundary between States.

2.1.8 Parties should arrange that their search and rescue services are able to give prompt response to distress calls.

2.1.9 On receiving information that a person is in distress at sea in an area within which a Party provides for the overall co-ordination of search and rescue operations, the responsible authorities of that Party shall take urgent steps to provide the most appropriate assistance available.

2.1.10 Parties shall ensure that assistance be provided to any person in distress at sea. They shall do so regardless of the nationality or status of such a person or the circumstances in which that person is found.

2.2 *Co-ordination of search and rescue facilities*

2.2.1 Parties shall make provision for the co-ordination of the facilities required to provide search and rescue services round their coasts.

2.2.2 Parties shall establish a national machinery for the overall co-ordination of search and rescue services.

2.3 *Establishment of rescue co-ordination centres and rescue sub-centres*

2.3.1 To meet the requirements of paragraphs 2.2.1 and 2.2.2 Parties shall establish rescue co-ordination centres for their search and rescue services and such rescue sub-centres as they consider appropriate.

2.3.2 The competent authorities of each Party shall determine the area for which a rescue sub-centre is responsible.

2.3.3 Each rescue co-ordination centre and rescue sub-centre established in accordance with paragraph 2.3.1 shall have adequate means for the receipt of distress communications via a coast radio station or otherwise. Every such centre and sub-centre shall also have adequate means for communication with its rescue units and with rescue co-ordination centres or rescue sub-centres, as appropriate, in adjacent areas.

2.4 *Designation of rescue units*

2.4.1 Parties shall designate either:

.1 as rescue units, State or other appropriate public or private services suitably located and equipped, or parts thereof; or

.2 as elements of the search and rescue organization, State or other appropriate public or private services or parts thereof, not suitable for designation as rescue units, but which are able to participate in search and rescue operations, and shall define the functions of those elements.

2.5 *Facilities and equipment of rescue units*

2.5.1 Each rescue unit shall be provided with facilities and equipment appropriate to its task.

2.5.2 Each rescue unit should have rapid and reliable means of communication with other units or elements engaged in the same operation.

2.5.3 Containers or packages containing survival equipment for dropping to survivors should have the general nature of their contents indicated by a colour code in accordance with paragraph 2.5.4 and by printed indication and self-explanatory symbols, to the extent that such symbols exist.

2.5.4 The colour identification of the contents of droppable containers and packages containing survival equipment should take the form of streamers coloured according to the following code:

.1 Red—medical supplies and first aid equipment;

.2 Blue—food and water;

.3 Yellow—blankets and protective clothing; and

.4 Black—miscellaneous equipment such as stoves, axes, compasses and cooking utensils.

2.5.5 Where supplies of a mixed nature are dropped in one container or package, the colour code should be used in combination.

2.5.6 Instructions on the use of the survival equipment should be enclosed in each of the droppable containers or packages. They should be printed in English and in at least two other languages.

CHAPTER 3—CO-OPERATION

3.1 *Co-operation between States*

3.1.1 Parties shall co-ordinate their search and rescue organizations and should, whenever necessary, co-ordinate search and rescue operations with those of neighbouring States.

3.1.2 Unless otherwise agree between the States concerned, a Party should authorize, subject to applicable national laws, rules and regulations, immediate entry into or over its territorial sea or territory of rescue units of other Parties solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties. In such cases, search and rescue operations shall, as far as practicable, be co-ordinated by the appropriate rescue co-ordination centre of the Party which has authorized entry, or such other authority as has been designated by that Party.

3.1.3 Unless otherwise agreed between the States concerned, the authorities of a Party which wishes its rescue units to enter into or over the territorial sea or territory of another Party solely for the purpose of searching for the position of maritime casualties and rescuing the survivors of such casualties, shall transmit a request, giving full details of the projected mission and the need for it, to the rescue co-ordination centre of that other Party, or to such other authority as has been designated by that Party.

3.1.4 The competent authorities of Parties shall:

.1 immediately acknowledge the receipt of such a request; and

.2 as soon as possible indicate the conditions, if any, under which the projected mission may be undertaken.

3.1.5 Parties should enter into agreements with neighbouring States setting forth the conditions for entry of each other's rescue units into or over their respective territorial sea or territory. These agreements should also provide for expediting entry of such units with the least possible formalities.

3.1.6 Each Party should authorize its rescue co-ordination centres:

.1 to request from other rescue co-ordination centres such assistance, including vessels, aircraft, personnel or equipment, as may be needed;

.2 to grant any necessary permission for the entry of such vessels, aircraft, personnel or equipment into or over its territorial sea or territory; and

.3 to make the necessary arrangements with the appropriate customs, immigration or other authorities with a view to expediting such entry.

3.1.7 Each Party should authorize its rescue co-ordination centres to provide, when requested, assistance to other rescue co-ordination centers, including assistance in the form of vessels, aircraft, personnel or equipment.

3.1.8 Parties should enter into search and rescue agreements with neighboring States regarding the pooling of facilities, establishment of common procedures, conduct of joint training and exercises, regular checks of inter-State communication channels, liaison visits by rescue co-ordination centre personnel and the exchange of search and rescue information.

3.2 Co-ordination with aeronautical services

3.2.1 Parties shall ensure the closest practicable co-ordination between maritime and aeronautical services so as to provide for the most effective and efficient search and rescue services in and over their search and rescue regions.

3.2.2 Whenever practicable, each Party should establish joint rescue co-ordination centres and rescue sub-centres to serve both maritime and aeronautical purposes.

3.2.3 Whenever separate maritime and aeronautical rescue co-ordination centres or rescue sub-centres are established to serve the same area, the Party concerned shall ensure the closest practicable co-ordination between the centres or sub-centres.

3.2.4 Parties shall ensure as far as is possible the use of common procedures by rescue units established for maritime purposes and those established for aeronautical purposes.

CHAPTER 4—PREPARATORY MEASURES

4.1 Requirements for information

4.1.1 Each rescue co-ordination centre and rescue sub-centre shall have available up-to-date information relevant to search and rescue operations in its area including information regarding:

.1 rescue units and coast watching units;

.2 any other public and private resources, including transportation facilities and fuel supplies, that are likely to be useful in search and rescue operations;

.3 means of communication that may be used in search and rescue operations;

.4 names, cable and telex addresses, telephone and telex numbers of shipping agents, consular authorities, international organizations and other agencies who may be able to assist in obtaining vital information on vessels;

.5 the locations, call signs or maritime mobile service identities, hours of watch and frequencies of all radio stations likely to be employed in search and rescue operations;

.6 the locations, call signs or maritime mobile service identities, hours of watch and frequencies of all coast radio stations disseminating meteorological forecasts and warnings for the search and rescue region;

.7 the locations and hours of watch of services keeping radio watch and the frequencies guarded;

.8 objects likely to be mistaken for unlocated or unreported wreckage; and

.9 locations where supplies of droppable emergency survival equipment are stored.

4.1.2. Each rescue co-ordination centre and rescue sub-centre should have ready access to information regarding the position, course, speed and call sign or ship station identity of vessels within its area which may be able to provide assistance to vessels or persons in distress at sea. This information shall either be kept in the rescue co-ordination centre or be readily obtainable when necessary.

4.1.3 A large-scale map shall be provided at each rescue co-ordination centre and rescue sub-centre for the purpose of displaying and plotting information relevant to search and rescue operations in its area.

4.2 Operating plans or instructions

4.2.1 Each rescue co-ordination centre and rescue sub-centre shall prepare or have available detailed plans or instructions for the conduct of search and rescue operations in its area.

4.2.2 The plans or instructions shall specify arrangements for the servicing and refueling, to the extent possible, of vessels, aircraft and vehicles employed in search and rescue operations, including those made available by other States.

4.2.3 The plans or instructions should contain details regarding action to be taken by those engaged in search and rescue operations in the area, including:

.1 the manner in which search and rescue operations are to be conducted;

.2 the use of available communications systems and facilities;

.3 the action to be taken jointly with other rescue co-ordination centres or rescue sub-centres, as appropriate;

.4 the methods of alerting vessels at sea and en route aircraft;

.5 the duties and authority of personnel assigned to search and rescue operations;

.6 possible redeployment of equipment that may be necessitated by meteorological or other conditions;

.7 the methods of obtaining essential information relevant to search and rescue operations, such as appropriate notices to mariners and reports and forecasts of weather and sea surface conditions;

.8 the methods of obtaining from other rescue co-ordination centres or rescue sub-centres, as appropriate, such assistance as may be needed, including vessels, aircraft, personnel and equipment;

.9 the methods of assisting rescue vessels or other vessels to rendezvous with vessels in distress; and

.10 the methods of assisting distressed aircraft compelled to ditch to rendezvous with surface craft.

4.3 *Preparedness of rescue units*

4.3.1 Each designated rescue unit shall maintain a state of preparedness commensurate with its task and should keep the appropriate rescue co-ordination centre or rescue sub-centre informed of its state of preparedness.

CHAPTER 5—OPERATING PROCEDURES

5.1 *Information concerning emergencies*

5.1.1 Parties shall ensure that such continuous radio watches as are deemed practicable and necessary, are maintained on international distress frequencies. A coast radio station receiving any distress call or message shall:

.1 immediately inform the appropriate rescue co-ordination centre or rescue sub-centre;

.2 rebroadcast to the extent necessary to inform ships on one or more of the international distress frequencies or on any other appropriate frequency;

.3 precede such rebroadcasts with the appropriate automatic alarm signals unless this has already been done; and

.4 take such subsequent action as decided by the competent authority.

5.1.2 Any authority or element of the search and rescue organization having reason to believe that a vessel is in a state of emergency should give as soon as possible all available information to the rescue co-ordination centre or rescue sub-centre concerned.

5.1.3 Rescue co-ordination centres and rescue sub-centres shall, immediately upon receipt of information concerning a vessel in a state of emergency, evaluate such information and determine the phase of emergency in accordance with paragraph 5.2 and the extent of operation required.

5.2 Emergency phases

5.2.1 For operational purposes, the following emergency phases shall be distinguished:

.1 *Uncertainty phase:*

.1.1 when a vessel has been reported overdue at its destination; or

.1.2 when a vessel has failed to make an expected position or safety report.

.2 *Alert phase:*

.2.1 when, following the uncertainty phase, attempts to establish contact with the vessel have failed and inquiries addressed to other appropriate sources have been unsuccessful; or

.2.2 when information has been received indicating that the operating efficiency of a vessel is impaired but not to the extent that a distress situation is likely.

.3 *Distress phase:*

.3.1 when positive information is received that a vessel or a person is in grave and imminent danger and in need of immediate assistance; or

.3.2 when, following the alert phase, further unsuccessful attempts to establish contact with the vessel and more widespread unsuccessful inquiries point to the probability that the vessel is in distress; or

.3.3 when information is received which indicates that the operating efficiency of a vessel has been impaired to the extent that a distress situation is likely.

5.3 Procedures for rescue co-ordination centres and rescue sub-centres during emergency phases

5.3.1 Upon the declaration of the *uncertainty phase*, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall initiate inquiries in order to determine the safety of the vessel or shall declare the alert phase.

5.3.2 Upon the declaration of the *alert phase*, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall extend the inquiries for the missing vessel, alert appropriate search and rescue services and initiate such action, as described in paragraph 5.3.3, as is necessary in the light of the circumstances of the particular case.

5.3.3 Upon the declaration of the *distress phase*, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall:

.1 initiate action in accordance with the arrangements set out in paragraph 4.2;

.2 where appropriate, estimate the degree of uncertainty of the vessel's position and determine the extent of any area to be searched;

.3 notify the owner of the vessel or his agent if possible and keep him informed of developments;

.4 notify other rescue co-ordination centres or rescue sub-centres, the help of which seems likely to be required or which may be concerned in the operation;

.5 request at an early stage any help which might be available from aircraft, vessels or services not specifically included in the search and rescue organization, considering that, in the majority of distress situations in ocean areas, other vessels in the vicinity are important elements for search and rescue operations;

.6 draw up a broad plan for the conduct of the operations from the information available and communicate such plan to the authorities designated in accordance with paragraphs 5.7 and 5.8 for their guidance;

.7 amend as necessary in the light of circumstances the guidance already given in paragraph 5.3.3.6;

.8 notify the consular or diplomatic authorities concerned or, if the incident involves a refugee or displaced person, the office of the competent international organization;

.9 notify accident investigation authorities as appropriate; and

.10 notify any aircraft, vessel or other services mentioned in paragraph 5.3.3.5 in consultation with the authorities designated in accordance with paragraphs 5.7 or 5.8, as appropriate, when their assistance is no longer required.

5.3.4 *Initiation of search and rescue operations in respect of a vessel whose position is unknown*

5.3.4.1 In the event of an emergency phase being declared in respect of a vessel whose position is unknown, the following shall apply:

.1 when a rescue co-ordination centre or rescue sub-centre is notified of the existence of an emergency phase and is unaware of other centres taking appropriate action, it shall assume responsibility for initiating suitable action and confer with neighboring centres with the objective of designating one centre to assume responsibility forthwith;

.2 unless otherwise decided by agreement between the centres concerned, the centre to be designated shall be the centre responsible for the area in which the vessel was according to its last reported position; and

.3 after the declaration of the distress phase, the centre co-ordinating the search and rescue operations shall, if necessary, inform other appropriate centres of all the circumstances of the state of emergency and of all subsequent developments.

5.3.5 *Passing information to vessels in respect of which an emergency phase has been declared*

5.3.5.1 Whenever applicable, the rescue co-ordination centre or rescue sub-centre responsible for search and rescue operations shall be responsible for passing to the vessel for which an emergency phase has been declared, information on the search and rescue operation it has initiated.

5.4 *Co-ordination when two or more parties are involved*

5.4.1 Where the conduct of operations over the entire search and rescue region is the responsibility of more than one Party, each Party shall take appropriate action in accordance with the operating plans or instructions referred to in paragraph 4.2 when so requested by the rescue co-ordination centre of the region.

5.5 *Termination and suspension of search and rescue operations*

5.5.1 *Uncertainty phase and alert phase.*

5.5.1.1 When during an uncertainty phase or an alert phase a rescue co-ordination centre or rescue sub-centre, as appropriate, is informed that the emergency no longer exists, it shall so inform any authority, unit or service which has been activated or notified.

5.5.2 *Distress phase.*

5.5.2.1 When during a distress phase a rescue co-ordination centre or rescue sub-centre, as appropriate, is informed by the vessel in distress or other appropriate sources that the emergency no longer exists, it shall take the necessary action to terminate the search and rescue operations and to inform any authority, unit or service which has been activated or notified.

5.5.2.2 If during a distress phase it has been determined that the search should be discontinued the rescue co-ordination centre or rescue sub-centre, as appropriate, shall suspend the search and rescue operations and so inform any authority, unit or service which has been activated or notified. Information subsequently received shall be evaluated and search and rescue operations resumed when justified on the basis of such information.

5.5.2.3 If during a distress phase it has been determined that further search would be of no avail, the rescue co-ordination centre or rescue sub-centre, as appropriate, shall terminate the search and rescue operations and so inform any authority, unit or service which has been activated or notified.

5.6 On-scene co-ordination of search and rescue activities

5.6.1 The activities of units engaged in search and rescue operations, whether they be rescue units or other assisting units, shall be co-ordinated to ensure the most effective results.

5.7 Designation of on-scene commander and his responsibilities

5.7.1 When rescue units are about to engage in search and rescue operations, one of them should be designated on-scene commander as early as practicable and preferably before arrival within the specified search area.

5.7.2 The appropriate rescue co-ordination centre or rescue sub-centre should designate an on-scene commander. If this is not practicable, the units involved should designate by mutual agreement an on-scene commander.

5.7.3 Until such time as an on-scene commander has been designated, the first rescue unit arriving at the scene of action should automatically assume the duties and responsibilities of an on-scene commander.

5.7.4 An on-scene commander shall be responsible for the following tasks when these have not been performed by the responsible rescue co-ordination centre or rescue sub-centre, as appropriate:

.1 determining the probable position of the object of the search, the probable margin of error in this position, and the search area;

.2 making arrangements for the separation for safety purposes of units engaged in the search;

.3 designating appropriate search patterns for the units participating in the search and assigning search areas to units or groups of units;

.4 designating appropriate units to effect rescue when the object of the search is located; and

.5 co-ordinating on-scene search and rescue communications.

5.7.5 An on-scene commander shall also be responsible for the following:

.1 making periodic reports to the rescue co-ordination centre or rescue sub-centre which is co-ordinating the search and rescue operations; and

.2 reporting the number and the names of survivors to the rescue co-ordination centre or rescue sub-centre which is co-ordinating the search and rescue operations, providing the centre with the names and destinations of units with survivors aboard, reporting which survivors are in each unit and requesting additional assistance from the centre when necessary, for example, medical evacuation of seriously injured survivors.

5.8 Designation of co-ordinator surface search and his responsibilities

5.8.1 If rescue units (including warships) are not available to assume the duties of an on-scene commander but a number of merchant vessels or other vessels are participating in the search and rescue operations, one of them should be designated by mutual agreement as co-ordinator surface search.

5.8.2 The co-ordinator surface search should be designated as early as practicable and preferably before arrival within the specified search area.

5.8.3 The co-ordinator surface search should be responsible for as many of the tasks listed in paragraphs 5.7.4 and 5.7.5 as the vessel is capable of performing.

5.9 Initial action

5.9.1 Any unit receiving information of a distress incident shall take whatever immediate action to assist as is within its capability or shall alert other units which might be able to assist and shall notify the rescue co-ordination centre or rescue sub-centre in whose area the incident has occurred.

5.10 Search areas

5.10.1 Search areas determined in accordance with paragraph 5.3.3.2, 5.7.4.1 or 5.8.3 may be altered as appropriate by the on-scene commander or the co-ordinator surface search, who should notify the rescue co-ordination centre or rescue sub-centre of his action and his reasons for doing so.

5.11 Search patterns

5.11.1 Search patterns designated in accordance with paragraph 5.3.3.6, 5.7.4.3 or 5.8.3 may be changed to other patterns if considered necessary by the on-scene commander or the co-ordinator surface search, who should notify the rescue co-ordination centre or rescue sub-centre of his action and his reasons for doing so.

5.12 Search successful

5.12.1 When the search has been successful the on-scene commander or the co-ordinator surface search should direct the most suitably equipped units to conduct the rescue or to provide other necessary assistance.

5.12.2 Where appropriate the units conducting the rescue should notify the on-scene commander or the co-ordinator surface search of the number and names of survivors aboard, whether all personnel have been accounted for and whether additional assistance is required. for example, medical evacuations, and the destination of the units.

5.12.3 The on-scene commander or the co-ordinator surface search should immediately notify the rescue co-ordination centre or rescue sub-centre when the search has been successful.

5.13 Search unsuccessful

5.13.1 The search should only be terminated when there is no longer any reasonable hope of rescuing survivors.

5.13.2 The rescue co-ordination centre or rescue sub-centre co-ordinating the search and rescue operations should normally be responsible for terminating the search.

5.13.3 In remote ocean areas not under the responsibility of a rescue co-ordination centre or where the responsible centre is not in a position to co-ordinate the search and rescue operations, the on-scene commander or the co-ordinator surface search may take responsibility for terminating the search.

CHAPTER 6—SHIP REPORTING SYSTEMS

6.1 General

6.1.1 Parties should establish a ship reporting system for application within any search and rescue region for which they are responsible, where this is considered necessary to facilitate search and rescue operations and is deemed practicable.

6.1.2 Parties contemplating the institution of a ship reporting system should take account of the relevant recommendations of the Organization.

6.1.3 The ship reporting system should provide up-to-date information on the movements of vessels in order, in the event of a distress incident:

.1 to reduce the interval between the loss of contact with a vessel and the initiation of search and rescue operations in cases where no distress signal has been received;

.2 to permit rapid determination of vessels which may be called upon to provide assistance;

.3 to permit delineation of a search area of limited size in case the position of a vessel in distress is unknown or uncertain; and

.4 to facilitate the provision of urgent medical assistance or advice to vessels not carrying a doctor.

6.2 Operational requirements

6.2.1 To achieve the objectives set out in paragraph 6.1.3, the ship reporting system should satisfy the following operational requirements:

.1 provision of information, including sailing plans and position reports, which would make it possible to predict the future positions of participating vessels;

.2 maintenance of a shipping plot;

.3 receipt of reports at appropriate intervals from participating vessels;

.4 simplicity in system design and operation; and

.5 use of an internationally agreed standard ship reporting format and internationally agreed standard procedures.

6.3 Types of reports

6.3.1 A ship reporting system should incorporate the following reports:

.1 *Sailing plan*—giving name, call sign or ship station identity, date and time (in GMT) of departure, details of the vessel's point of departure, next port of call, intended route, speed and expected date and time (in GMT) of arrival. Significant changes should be reported as soon as possible.

.2 *Position report*—giving name, call sign or ship station identity, date and time (in GMT), position, course, and speed.

.3 *Final report*—giving name, call sign or ship station identity, date and time (in GMT) of arrival at destination or of leaving the area covered by the system.

6.4 *Use of systems*

6.4.1 Parties should encourage all vessels to report their positions when travelling in areas where arrangements have been made to collect information on positions for search and rescue purposes.

6.4.2 Parties recording information on the position of vessels should disseminate, so far as practicable, such information to other States when so requested for search and rescue purposes.

Certified true copy of the English text of the International Convention on Maritime Search and Rescue, 1979, done at Hamburg on 27 April 1979, the original of which is deposited with the Secretary-General of the Inter-Governmental Maritime Consultative Organization.

For the Secretary-General of the Inter-Governmental Maritime Consultative Organization:

London,

INTER-GOVERNMENTAL MARITIME
CONSULTATIVE ORGANIZATION

SAR/CONF/9
25 April 1979
Original: ENGLISH

INTERNATIONAL CONFERENCE
ON MARITIME SEARCH AND
RESCUE, 1979

IMCO

FINAL ACT OF THE INTERNATIONAL CONFERENCE ON MARITIME SEARCH AND RESCUE, 1979

(Text adopted by the Conference)

1 By its Resolution A.406(X) of 17 November 1977 the Assembly of the Inter-Governmental Maritime Consultative Organization decided to convene an International Conference to consider the adoption of a convention on maritime search and rescue.

2 Upon the invitation of the Government of the Federal Republic of Germany, the Conference was held in Hamburg from 9 to 27 April 1979. The following States were represented by delegations at the Conference:

Algeria
Argentina
Australia
Belgium
Brazil
Bulgaria
Canada
Chile
China
Cuba
Cyprus
Denmark
Finland
France
Gabon
German Democratic Republic
Germany, Federal Republic of
Greece
India
Indonesia
Ireland
Italy
Ivory Coast
Japan
Kuwait
Liberia
Mexico
Netherlands
New Zealand
Nigeria
Norway
Poland
Portugal
Saudi Arabia
Singapore
Spain
Sweden
Switzerland
Thailand
Trinidad and Tobago
Tunisia
Turkey
Union of Soviet Socialist Republics
United Kingdom of Great Britain and Northern Ireland
United Republic of Cameroon
United States of America
Uruguay
Venezuela
Yemen
Yugoslavia
Zaire

For reasons of economy, this document is printed in a limited number. Delegates are kindly asked to bring their copies to meetings and not to request additional copies.

3 [illegible] and the Dominican Republic were represented at the Conference by observers.

4 Hong Kong, an Associate Member of the Inter-Governmental Maritime Consultative Organization, sent an observer to the Conference.

5 The following organizations in the United Nations system sent representatives to the Conference:

- Office of the United Nations High Commissioner for Refugees (UNHCR)
- International Civil Aviation Organization (ICAO)
- International Telecommunication Union (ITU)
- World Meteorological Organization (WMO)

6 The following non-governmental organizations sent observers to the Conference:

- International Chamber of Shipping (ICS)
- International Confederation of Free Trade Unions (ICFTU)
- International Radio-Maritime Committee (CIRM)
- International Shipowners' Association (INSA)
- International Federation of Shipmasters' Associations (IFSMA)

7 The Conference was opened by Mr. C.P. Srivastava, Secretary-General of the Inter-Governmental Maritime Consultative Organization. On behalf of the Government of the Federal Republic of Germany Mr. H. Ruhnau, Secretary of State, made a statement welcoming the delegates. Mr. J. Steinert, Senator of the Free and Hanseatic City of Hamburg, also welcomed the delegates.

8 Dr. G. Breuer, Head of the delegation of the Federal Republic of Germany, was elected President of the Conference.

9 The following were elected as Vice-Presidents of the Conference:

Capitán A.A. Torre (Argentina)
Mr. Wu Ying Cheng (China)
Mr. G. Marchand (France)
Mr. S. Kobayashi (Japan)
Dr. M. Kayal (Saudi Arabia)
Mr. A. Baouab (Tunisia)
Mr. G. Kolesnikov (USSR)
H.E. Mr. J.-B. Beleoken (United Republic of Cameroon)
Commander A.J. McCullough (United States)
Contralmirante N. Sánchez Luna (Venezuela)

10 **The Secretariat of the Conference consisted of the following officers:**

Secretary-General: Mr. C.P. Srivastava
Executive Secretary: Mr. G. Kostylev
Deputy Executive Secretary: Mr. W.S.G. Morrison
Secretary to the Plenary: Mr. W. de Goede

11 **The Conference established the following Committees with officers as indicated:**

Steering Committee

Chairman: Dr. G. Breuer (Federal Republic of Germany) President of the Conference

Committee I

Chairman: Mr. G.S. Santa-Cruz (Chile)
Vice-Chairman: Mr. A.R.M. Al-Yagout (Kuwait)

Committee II

Chairman: Mr. E.J. Salvesen (Norway)
Vice-Chairman: Lieutenant-Commander G.J. Dakoury (Ivory Coast)

Drafting Committee

Chairman: Mr. P.D. Hamilton-Eddy (United Kingdom)

Vice-Chairman Mr. H. Güvener (Turkey)

Credentials Committee

Chairman: Mr. R. Drummond de Mello (Brazil)

12 **The following documentation formed the basis for the work of the Conference:**

- **a draft International Convention on Maritime Search and Rescue and related resolutions prepared by the Group of Experts on Search and Rescue of the Inter-Governmental Maritime Consultative Organization and approved by its Maritime Safety Committee**
- **proposals and comments thereon submitted to the Conference by governments and interested organizations.**

13 As a result of its deliberations, recorded in the summary records of the plenary meetings, the Conference adopted the INTERNATIONAL CONVENTION ON MARITIME SEARCH AND RESCUE, 1979, which constitutes Attachment 1 to this Final Act.

14 The Conference also adopted the Resolutions contained in Attachment 2 to this Final Act.

15 The text of this Final Act, including its attachments, is established in a single original text in the Chinese, English, French, Russian and Spanish languages and is deposited with the Secretary-General of the Inter-Governmental Maritime Consultative Organization. Official translations of the Convention shall be prepared in the Arabic, German and Italian languages and shall be deposited with this Final Act.

16 The Secretary-General of the Inter-Governmental Maritime Consultative Organization shall send certified copies of this Final Act together with the Resolutions of the Conference, certified copies of the authentic texts of the Convention and, when they have been prepared, of the official translations of the Convention, to the Governments of the States invited to be represented at the Conference, in accordance with the wishes of those Governments.

IN WITNESS WHEREOF the undersigned have affixed their signatures to this Final Act.

DONE AT HAMBURG this twenty-seventh day of April one thousand nine hundred and seventy-nine.

96TH CONGRESS }
2d Session

SENATE

{ EXECUTIVE
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AMENDMENTS TO THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION CONVENTION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE AMENDMENTS TO THE CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION SIGNED AT GENEVA, MARCH 6, 1948 (THE IMCO CONVENTION). THE AMENDMENTS WERE ADOPTED ON NOVEMBER 15, 1979, BY THE ASSEMBLY OF THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION AT ITS ELEVENTH SESSION

MAY 20, 1980.—Amendments were read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *May 20, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to acceptance, amendments to the Convention on the Intergovernmental Maritime Consultative Organization signed at Geneva March 6, 1948 (the IMCO Convention). The amendments were adopted on November 15, 1979, by the Assembly of the Intergovernmental Maritime Consultative Organization (IMCO) at its eleventh session.

These amendments are part of a series of amendments, negotiated with a view to bringing the Convention up-to-date given changes of membership and structure that have occurred since its entry into force in 1958. Other amendments in this series were transmitted to the Senate for advice and consent to acceptance on May 3, 1979.

Membership in IMCO has grown from 21 member States in 1958 to 113 member States in 1979. This expansion of membership gave rise to concern that the IMCO Council did not give adequate representation to member States within its existing structure. Three of the four amendments transmitted today address this problem; they increase the number of members on the Council, and the number of Council members required to constitute a quorum at Council meetings; and they provide for the distribution of Council membership among member States with interests in international shipping, international seaborne trade, and other special interests in maritime transport or navigation. These amendments will ensure adequate representation on the Council of the newly expanded membership.

The fourth amendment provides for a member State to give notification of its withdrawal from IMCO should an amendment to which it is strongly opposed be accepted by two thirds of the member States. Presently such acceptance triggers the automatic entry into force of an amendment for *all* member States. Under the proposed amendment, a member State would have the option of withdrawing from IMCO rather than subjecting itself to an amendment with which it did not agree.

Support for these amendments, as well as for those transmitted on May 3, 1979, will contribute to the interest of the United States in facilitating cooperation among maritime nations. To that end, I urge the Senate to give early and favorable consideration to the amendments and give its advice and consent to their acceptance.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 7, 1980.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to their transmission to the Senate for advice and consent to acceptance, amendments to the Convention on the Intergovernmental Maritime Consultative Organization signed at Geneva March 6, 1948 (the IMCO Convention). The amendments were adopted on November 15, 1979, by the Assembly of the Intergovernmental Maritime Consultative Organization (IMCO) at its eleventh session. They are the final component in a cluster of amendments resulting from a process begun at the fifth extraordinary session of the Assembly in 1974. Amendments adopted by the Assembly in 1975 and 1977 were transmitted to the Senate on May 3, 1979, for advice and consent to acceptance, but action has not yet been completed.

Three of the four amendments adopted by the Assembly in 1979 concern the expansion of the IMCO Council from 24 to 32 members. This was considered necessary to ensure adequate representation on the Council. Membership in IMCO has expanded from 21 Member States when the Convention entered into force in 1958 to 113 Member States in 1979.

First, Article 17 (renumbered as Article 16 under the 1977 Amendments, which have not yet come into force) was amended to state that the Council shall be composed of thirty-two members elected by the Assembly.

Second, Article 18 (renumbered as Article 17 under the 1977 amendments) was amended to provide for the distribution of the expanded Council among three categories of States. Eight members shall be States with the largest interest in providing international shipping services, eight shall be other States with the largest interest in international seaborne trade, and sixteen shall be States not otherwise elected which have special interests in maritime transport or navigation and whose election will ensure the representation of all major geographic areas.

Third, Article 20 (renumbered as Article 19 under the 1977 amendments) was amended to increase from sixteen to twenty-one the number of Council members required to constitute a quorum.

The fourth amendment concerns withdrawal from IMCO. Article 51 (renumbered as Article 66 under the 1977 amendments) was amended to provide that if a member gives notification of withdrawal from IMCO on account of an amendment to the IMCO Convention, such withdrawal will take effect on the date of entry into force of the amendment, provided that such notification takes place within 60 days of the acceptance of the amendment by two-thirds of the IMCO membership.

The Department of Transportation concurs in my support for these amendments. It is hoped that the Senate will give its advice and consent at an early date.

Respectfully submitted,

Warren Christopher,
Acting Secretary of State.

UNITED NATIONS: NATIONS UNIES,
7 January 1980.

Reference: C.N.290.1979.Treaties-29.

CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION SIGNED AT GENEVA ON 6 MARCH 1948

AMENDMENTS TO ARTICLES 17, 18, 20 AND 51 OF THE CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

(Adopted by the Assembly of the Inter-Governmental Maritime Consultative Organization in Resolution A.450(XI) of 15 November 1979)

TRANSMISSION OF THE TEXT OF THE AMENDMENTS

SIR: I have the honour, upon instructions from the Secretary-General, to inform you that, by a communication received on 17 December 1979, the Secretary-General of the Inter-Governmental Maritime Consultative Organization transmitted to him for deposit the text of the amendments to articles 17, 18, 20 and 51 of the Convention on the Inter-Governmental Maritime Consultative Organization signed at Geneva on 6 March 1948. The said amendments were adopted on 15 November 1979 by resolution A.450(XI) at the eleventh regular session of the Assembly of IMCO.

Pursuant to the provisions of article 52 of the Convention, please find enclosed herewith copies in English, French and Spanish of the above-mentioned resolution and of its annex containing the text of the amendments.

I wish to remind you that, in accordance with article 53 of the Convention the instruments of acceptance of the above-mentioned amendments shall be communicated to the Secretary-General of the IMCO for deposit with the Secretary-General of the United Nations.

Accept, Sir, the assurances of my highest consideration.

ERIK SUY,
The Legal Counsel.

(Sent to the Ministry of Foreign Affairs of Member States.)

RESOLUTION A.450(XI)

adopted on 15 November 1979

AMENDMENTS TO THE CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

The Assembly,

Recalling resolution A.401(X) adopted at its tenth session by which it decided to convene in 1979 an ad hoc working group open to all Member Governments to study and submit to the Assembly at its eleventh session proposals for amending the Convention on the Inter-Governmental Maritime Consultative Organization, having regard to the submissions presented to the Assembly at its tenth session by the Governments of France, Italy and Nigeria, and other proposals which might be submitted by Member Governments,

Having considered the report of the Ad Hoc Working Group including the Working Group's recommendations on proposed amendments to the IMCO Convention,

Considering that the adoption of the amendments proposed will complete the process of amending the IMCO Convention which was begun at the fifth extraordinary session of the Assembly in 1974,

Noting with satisfaction that the needed revisions in the IMCO Convention have all been initiated within the Organization and have been considered in a spirit of goodwill and mutual accommodation and adopted with the general agreement of Members,

1. Adopts amendments to Articles 17, 18, 20 and 51 of the Convention on the Inter-Governmental Maritime Consultative Organization, the texts of which are contained in the Annex to the present resolution;

2. Requests the Secretary-General of the Organization to deposit the adopted amendments with the Secretary-General of the United Nations in accordance with Article 52 of the IMCO Convention and to receive instruments of acceptance and declarations as provided for in Article 53 of the Convention;

3. Urges Members, in view of the special importance of these amendments, to take the necessary steps to accept them at the earliest possible date after receiving copies thereof, by communicating the appropriate instruments of acceptance to the Secretary-General in accordance with Article 53 of the Convention.

ANNEX

AMENDMENTS TO THE CONVENTION ON THE INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION

The existing text of Article 17 (renumbered as Article 16 under the 1977 amendments) is replaced by the following:

The Council shall be composed of thirty-two Members elected by the Assembly.

The existing text of Article 18 (renumbered as Article 17 under the 1977 amendments) is replaced by the following:

In electing the Members of the Council, the Assembly shall observe the following criteria:

(a) Eight shall be States with the largest interest in providing international shipping services;

(b) Eight shall be other States with the largest interest in international seaborne trade;

(c) Sixteen shall be States not elected under (a) or (b) above which have special interests in maritime transport or navigation, and whose election to the Council will ensure the representation of all major geographic areas of the world.

The existing text of Article 20 (renumbered as Article 19 under the 1977 amendments) is replaced by the following:

(a) The Council shall elect its Chairman and adopt its own Rules of Procedure except as otherwise provided in the Convention.

(b) Twenty-one Members of the Council shall constitute a quorum.

(c) The Council shall meet upon one month's notice as often as may be necessary for the efficient discharge of its duties upon the summons of its Chairman or upon request by not less than four of its Members. It shall meet at such places as may be convenient.

The existing text of Article 51 (renumbered as Article 66 under the 1977 amendments) is replaced by the following:

Texts of proposed amendments to the Convention shall be communicated by the Secretary-General to Members at least six months in advance of their consideration by the Assembly. Amendments shall be adopted by a two-thirds majority vote of the Assembly. Twelve months after its acceptance by two thirds of the Members of the Organization, other than Associate Members, each amendment shall come into force for all Members. If within the first 60 days of this period of tweve months a Member gives notification of withdrawal from the Organization on account of an amendment the withdrawal shall, notwithstanding the provisions of Article 58 of the Convention, take effect on the date on which such amendment comes into force.

Certified true copy of resolution A.450(XI), to which are annexed amendments to the Convention on the Inter-Governmental Maritime Consultative Organization, adopted on 15 November 1979 by the Assembly of the Organization at its eleventh session.

For the Secretary-General:

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London, 23.XI.79.

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96th Congress
2d Session
SENATE
Executive
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RECIPROCAL FISHERIES AGREEMENT WITH THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, 1979

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE RECIPROCAL FISHERIES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, 1979, WITH ITS AGREED MINUTE, DONE AT LONDON, MARCH 27, 1979

June 2, 1980.—Agreement was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 7) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, 1979, with its Agreed Minute, done at London, March 27, 1979. The report of the Department of State is enclosed for the information of the Senate in connection with its consideration of the Agreement.

The Reciprocal Fisheries Agreement, which pertains to reciprocal fishing activities in the waters off the United States Virgin Islands and the British Virgin Islands, was concluded in order to replace the Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, 1977, which expired on December 31, 1978. The purpose of the Agreement, like that of its predecessor, is to permit traditional, small-scale fishing operations in the Virgin Islands area to continue undisturbed. The United States will retain exclusive authority to enforce the provisions of the Agreement and applicable national fisheries regulations within the Fishery Conservation Zone, and the United Kingdom will retain similar authority within the exclusive fisheries zone of the British Virgin Islands. Without this Agreement, and as a consequence of the entry into force of the Fishery Conservation and Management Act of 1976 and of similar British legislation, such traditional fishing activity would have to cease. I therefore recommend that the Senate give early consideration to the Reciprocal Fisheries Agreement and its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 20, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you the Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, 1979, with its Agreed Minute. I recommend that this Agreement, pertaining to reciprocal fishing activities in the waters off the United States Virgin Islands (U.S.V.I.) and the British Virgin Islands (B.V.I.), which was signed by the United States on March 27, 1979, be transmitted to the Senate for its advice and consent to ratification.

This Agreement was negotiated to replace the Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, 1977, with its Agreed Minute. The 1977 Agreement, which was signed in Washington on June 24, 1977 and ratified by the United States on July 28, 1978, entered into force on November 7, 1978 and expired on December 31, 1978. It proved to be highly satisfactory and beneficial to both U.S. and B.V.I. fishermen.

Traditionally, fishermen from the B.V.I. and the U.S.V.I. have fished throughout the Virgin Islands area. A small number of fishermen from Puerto Rico also fish off the B.V.I. The result of the entry into force of the Fishery Conservation and Management Act of 1976 and of similar British legislation establishing 200-nautical-mile fishery zones in the Virgin Islands, however, was to forbid such traditional fishing. In order to enable traditional small-scale fishing in the waters off the U.S.V.I. and the B.V.I. to continue in accordance with existing patterns and levels, the Reciprocal Fisheries Agreement of 1977 was concluded. The Agreement of 1979, whose provisions are virtually identical to those of its predecessor, was concluded in order to permit these traditional fishing practices to continue following the expiration of the 1977 Agreement.

The provisions of the two Agreements differ only with respect to the termination clause. While the 1977 Agreement included a fixed expiration date, the 1979 Agreement provides that the Agreement: "shall continue in force until the expiry of a period of ninety days from the date on which either Party gives written notice to the other Party of its intention to terminate the Agreement."

In essence, the Agreement of 1979 will serve to avoid any disruption in the small-scale fisheries which have historically occurred around the Virgin Islands, and which have been a positive element in the close economic, social and cultural relations between the people of the U.S.V.I. and the B.V.I.

The Agreement provides that commercial fishing by vessels of the United States may continue in the exclusive fishery zone of the B.V.I. in accordance with existing levels and patterns, as may commercial fishing by vessels of the B.V.I. in the waters of the Fishery Conservation Zone (F.C.Z.) of the United States. The Agreed Minute defines the existing patterns and levels of fishing activity as a maximum of twelve United States vessels no more than 55 feet in length permitted to operate in the exclusive fishery zone of the B.V.I., and a maximum of two B.V.I. vessels no more than 40 feet in length permitted to operate in the United States F.C.Z. It also describes specifically the areas and seasons in which such fishing operations are authorized.

The Agreement stipulates that the United States has exclusive authority to enforce the provisions of the Agreement and applicable national fishery regulations within the F.C.Z. with respect to fishing by vessels of the B.V.I., and that the United Kingdom has similar exclusive authority within its exclusive fishery zone with respect to fishing by vessels of the United States.

The Reciprocal Fisheries Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland, 1979, with its Agreed Minute, will permit the traditional fishing activities of the Virgin Islands to continue. The Agreement is supported by both the Department of Commerce and the Caribbean Fishery Management Council. I recommend that the Agreement be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

RECIPROCAL FISHERIES AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland;

Seeking to maintain the long-standing and cooperative fisheries relations in adjacent waters which have formed a part of the close ties between the people of the British Virgin Islands and the people of the United States;

Desiring to ensure effective conservation of fishery stocks in the exclusive fishery zones of the British Virgin Islands and the United States;

Taking note of the United States Fishery Conservation and Management Act of 1976, establishing a fishery conservation zone contiguous to the territorial sea of the United States;

Taking note of the Proclamation by the Governor of the British Virgin Islands of 9 March 1977 establishing a fisheries zone contiguous to the territorial sea of the British Virgin Islands;

Recalling that the two Governments have a common approach based on the principle of equidistance regarding the limits of fishery jurisdiction as between the British Virgin Islands and the United States;

Have agreed as follows:

Article I

For the purposes of this Agreement:

(*a*) the exclusive fishery zone of the United States refers to waters subject to the fishery jurisdiction of the United States beyond the territorial sea;

(*b*) the exclusive fishery zone of the British Virgin Islands refers to waters subject to the fishery jurisdiction of the United Kingdom contiguous to the territorial sea of the British Virgin Islands.

Article II

Commercial fishing by vessels of the British Virgin Islands may continue in the exclusive fishery zone of the United States in accordance with existing patterns and at existing levels. The Government of the United States extends access to its exclusive fishery zone to vessels of the British Virgin Islands for the purpose of conducting such fishing.

Article III

Commercial fishing by vessels of the United States may continue in the exclusive fishery zone of the British Virgin Islands in accordance with exsiting patterns and at existing levels. The Government of the United Kingdom of Great Britain and Northern Ireland extends access to the exclusive fishery zone of the British Virgin Islands to vessels of the United States for the purpose of conducting such fishing.

Article IV

1. The Government of the United Kingdom of Great Britain and Northern Ireland shall have exclusive authority to enforce the provisions of this Agreement and applicable national fishery regulations with respect to fishing by vessels of the United States in the exclusive fishery zone of the British Virgin Islands; provided that such national regulations as may be applied shall not disturb existing patterns and levels of fishing.

2. The Government of the United States shall have exclusive authority to enforce the provisions of this Agreement and applicable national fishery regulations with respect to fishing by vessels of the British Virgin Islands in the exclusive fishery zone of the United States; provided that such national regulations as may be applied shall not disturb existing patterns and levels of fishing.

Article V

Nothing in this Agreement shall preclude either Party from regulating recreational fishing within its exclusive fishery zone in accordance with its applicable laws.

Article VI

1. Consultations shall be held at the request of either Party to this Agreement, when:

(*a*) there is reason to believe that vessels of the other are fishing in a manner inconsistent with existing patterns and levels of commercial fishing referred to in Articles II and III;

(*b*) either Party seeks a change in existing patterns or levels of commercial fishing referred to in Articles II and III;

(*c*) either Party intends to introduce conservation measures which may affect the existing patterns and levels of commercial fishing referred to in Articles II and III;

(*d*) there is a need to discuss implementation of any provision of this Agreement.

2. If such consultations result in a decision to amend the terms of this Agreement, such amendments shall enter into force by a subsequent exchange of diplomatic Notes.

Article VII

This Agreement shall enter into force on the date of exchange of instruments of ratification, and shall continue in force until the expiry of a period of 90 days from the date on which either Party gives written notice to the other Party of its intention to terminate this Agreement.

In witness whereof, the undersigned, duly authorized thereby by their respective Governments, have signed this Agreement.

Done in duplicate, at London on 27th March 1979.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Robert J Morris

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Evan Luard.

AGREED MINUTE

1. In connection with the signature of the Reciprocal Fisheries Agreement between the Government of the UK of Great Britain and Northern Ireland and the Government of the United States of America on 27 March 1979, representatives of the two governments agreed that the following information reflected the existing patterns and levels of commercial fishing by vessels of the United States in the exclusive fishery zone of the British Virgin Islands as defined in the Agreement:

(*a*) no fishing by vessels over fifty-five (55) feet in length;

(*b*) deep line fishing at or beyond the forty fathom curve by six vessels per day between thirty (30) and fifty-five (55) feet in length during April, May and June; and deep line fishing at or beyond the forty fathom curve by four such vessels per day during the remainder of the year;

(*c*) line and trap fishing by six vessels per day under thirty (30) feet in length west of a line drawn due north of Mount Sage (1,789 feet) on Tortola; and west of a line drawn due south from the easternmost point of Peter Island.

2. Representatives of the two governments agreed that the following reflected the existing patterns and levels of commercial fishing by vessels of the British Virgin Islands in the exclusive fishery zone of the United States as defined in the Agreement:

deep line fishing by two vessels per day under forty (40) feet in length, at or beyond the forty fathom curve.

GB.

96TH CONGRESS
2d Session

SENATE

EXECUTIVE
M

PROTOCOL AMENDING THE 1975 INCOME TAX CONVENTION WITH ISRAEL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE STATE OF ISRAEL WITH RESPECT TO TAXES ON INCOME SIGNED AT WASHINGTON ON NOVEMBER 20, 1975. THE PROTOCOL WAS SIGNED AT WASHINGTON ON MAY 30, 1980, WITH THREE RELATED EXCHANGES OF NOTES

DECEMBER 16, 1980.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
79-118 O
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *July 3, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Protocol Amending the Convention between the Government of the United States of America and the Government of Israel with Respect to Taxes on Income, signed at Washington on November 20, 1975. The Protocol was signed at Washington on May 30, 1980. I also transmit three related exchanges of notes and the report of the Department of State with respect to the Protocol.

Consideration of the Convention by the Senate has been delayed pending the correction of certain technical problems in its text. The Protocol accomplishes this by making certain amendments to the Convention. For example, Article 10 (Grants) is modified to conform more closely to United States and Israeli law with regard to the treatment of Israeli grants to United States investors.

The Protocol also modifies the withholding rates applicable to dividends paid by a subsidiary to a parent corporation and adds a new article dealing with charitable contributions.

It is most desirable that this Protocol, together with the Convention, be considered by the Senate as soon as possible and that the Senate give advice and consent to ratification of both instruments.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 13, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Protocol Amending the Convention between the Government of the United States of America and the Government of the State of Israel with Respect to Taxes on Income signed at Washington on November 20, 1975. The Protocol was signed at Washington on May 30, 1980. Also submitted for transmission to the Senate are three related exchanges of notes.

The Convention was transmitted to the Senate on February 11, 1976, but, at the request of the Department of the Treasury, Senate consideration of the Convention was delayed until certain technical problems in the text had been resolved. The Protocol resolves these problems by making certain amendments to the Convention. For example, Article 10 (Grants) is modified to conform more closely to United States and Israeli law with regard to the treatment of Israeli grants to United States investors.

The Protocol modifies the withholding tax rates applicable to dividends paid by a subsidiary to a parent corporation by providing that dividends paid out of income benefiting from Israeli tax holiday provisions will be subject to a 15 percent withholding rate rather than the 12.5 percent rate otherwise provided for subsidiary dividends.

The Protocol adds a new article dealing with charitable contributions. This article provides that, for United States tax purposes, a United States citizen or resident may claim as a charitable contribution donations to qualifying Israeli charities amounting to 25 percent of the taxpayer's Israeli source income. An Israeli resident may similarly claim as a charitable contribution donations to qualifying United States charities.

The Convention provides that Israeli compulsory loans will be treated as taxes for United States foreign tax credit purposes, with appropriate adjustments at the time the loan is repaid. The Protocol modifies that rule to limit the credit to corporations which become subject to compulsory loans prior to April 1, 1977.

The three related notes set forth certain understandings reached between the two Governments as follows:

1. Exchange of information shall be made in accordance with Article 29 of the Convention. It is understood, however, that at present Israel is not yet able to exchange income tax information on a routine

basis but that it is prepared to provide such information as soon as it has developed the necessary capability for the acquisition and compilation of tax information.

2. The two Governments will take steps to avoid duplication in the certification of eligible recipients of the charitable contributions described in Article 15–A of the Convention.

3. The United States is not able to accept the inclusion in the Protocol of provisions to create incentives to promote the flow of investment to Israel. However, the United States Government would be prepared to reopen discussions on the subject should circumstances change.

The Protocol will enter into force upon the expiration of thirty days following the date on which instruments of ratification are exchanged and shall thereupon have effect in accordance with Article 31 of the Convention.

A technical memorandum explaining in detail the provisions of the Protocol is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Protocol. It has the approval of both Departments.

Respectfully submitted.

EDMUND S. MUSKIE.

Protocol Amending the Convention Between the Government of the United States of America and the Government of the State of Israel with Respect to Taxes on Income Signed at Washington on November 20, 1975

The Government of the United States of America and the Government of the State of Israel, desiring to conclude a Protocol to amend the Convention with respect to taxes on income signed at Washington on November 20, 1975 (hereinafter referred to as "the Convention") have agreed as follows:

ARTICLE I

1. Subparagraph (a) of paragraph (1) of Article 1 (Taxes Covered) of the Convention shall be deleted and replaced by the following:

"(a) In the case of the United States the Federal income taxes imposed by the Internal Revenue Code, and the tax on insurance premiums paid to foreign insurers (but only to the extent that the relevant risk is not reinsured, directly or indirectly, with a person not entitled to relief from such tax), and"

2. Clauses (iv) and (v) of subparagraph (b) of paragraph (1) of Article 1 (Taxes Covered) of the Convention shall be deleted and replaced by the following:

"(iv) The tax on profits levied on banking institutions and insurance companies under the Value Added Tax Law, and

"(v) Compulsory loans made with respect to taxable years ending before April 1, 1988 with respect to corporations that became subject thereto before April 1, 1977."

ARTICLE II

Paragraph (3) of Article 3 (Fiscal Residence) of the Convention shall be deleted and replaced by the following:

"(3) A corporation which is both a United States corporation within the meaning of paragraph (1)(f)(i) of Article 2 (General Definitions) and an Israeli corporation within the meaning of paragraph (1)(f)(ii) of such Article 2 shall be considered to be outside the scope of this Convention except for purposes of paragraph (1) of Article 4 (Source of Income), Article 27 (Nondiscrimination), Article 29 (Exchange of Information), and Article 31 (Entry Into Force)."

ARTICLE III

1. Subparagraph (a) of paragraph (4) of Article 6 (General Rules of Taxation) of the Convention shall be deleted and replaced by the following:

"(a) The benefits conferred by a Contracting State under Articles 10 (Grants), 15-A (Charitable Contributions), 21 (Social Security Payments), 26 (Relief From Double Taxation), 27 (Nondiscrimination), and 28 (Mutual Agreement Procedure); and"

2. Paragraph (5) of Article 6 (General Rules of Taxation) of the Convention shall be deleted and replaced by the following:

"(5) The United States may impose its personal holding company tax and its accumulated earnings tax notwithstanding any provision of this Convention. However, an Israeli corporation shall be exempt from the United States personal holding company tax in any taxable year unless residents or citizens of the United States own, directly or indirectly, within the meaning of Section 544 of the Internal Revenue Code, 10 percent or more in value of the outstanding stock of the corporation at any time during the taxable year. An Israeli corporation shall be exempt from the United States accumulated earnings tax in any taxable year unless at least 25 percent of the voting stock of such coporation is owned by citizens or residents of the United States."

3. Paragraph (6) of Article 6 (General Rules of Taxation) of the Convention shall be renumbered as paragraph (7) and a new paragraph (6) shall be added, to read as follows:

"(6) Where under any provision of this Convention income arising in one of the Contracting States is relieved from tax in that Contracting State and, under the law in force in the other Contracting State a person, in respect of said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contractig State during the year such income accrues."

ARTICLE IV

Paragraph (3) of Article 7 (Income From Real Property) of the Convention shall be deleted and replaced by the following:

"(3) Gains from the alienation of shares of a company the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State may be taxed by that State."

ARTICLE V

The following new paragraph (8) shall be added to Article 8 (Busines Profits):

"(8) The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by a resident of Israel whether or not that business is carried on through a permanent establishment in the United States (but only to the extent that the relevant risk is not reinsured, directly or indirectly, with a person not entitled to relief from such tax)."

ARTICLE VI

Paragraph (1) of Article 9 (Shipping and Air Transport) of the Convention shall be deleted and replaced by the following:

"(1) Notwithstanding Article 8 (Business Profits) and Article 15 (Capital Gains): Where a resident of Contracting State derives income from the operation in international traffic of ships or aircraft, or gains from the sale, exchange, or other disposition of ships or aircraft used in international traffic by such resident, the other Contracting State shall exempt such income or gains from taxation."

ARTICLE VII

Paragraph (1) of Article 10 (Grants) of the Convention shall be deleted and replaced by the following:

"(1) For the purpose of computing United States tax, if Israel, a political subdivision thereof, or any agency of either makes a qualifying cash grant to a resident of the United States, the amount of such grant shall be included in the gross income of such resident, unless the resident elects to exclude it from gross income. If the resident elects to exclude it from gross income, then—

"(a) if the resident is a corporation the amount of such grant shall be treated as a contribution to its capital,

"(b) the resident shall be deemed to have contributed the amount of such grant to the Israeli corporation designated by the terms of the grant,

"(c) the resident's basis for the stock of the Israeli corporation shall not be increased by the amount deemed contributed under sub-paragraph (b), and

"(d) the basis of property of the Israeli corporation shall be reduced by the amount of the deemed contribution under subparagraph (b) in accordance with rules prescribed by the Secretary of the Treasury of the United States."

ARTICLE VIII

1. Subparagraph (b) of paragraph (2) of Article 12 (Dividends) of the Convention shall be deleted and replaced by the following:

"(b) When a corporation is the recipient of a dividend from a paying corporation of income derived during any period for which the paying corporation is not entitled to the reduced tax rate applicable to an approved enterprise under Israel's Encouragement of Capital Investments Law (1959), 12.5 percent of the gross amount of the dividend paid, but only if—

"(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

"(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received)."

2. The following new subparagraph (c) of paragraph (2) shall be added to Article 12 (Dividends) of the Convention:

"(c) When a corporation is the recipient of a dividend from a paying corporation of income derived during any period for which the paying corporation is entitled to the reduced tax rate applicable to an approved enterprise under Israel's Encouragement of Capital Investments Law (1959), 15 percent of the gross amount of the dividend paid, but only if the conditions of sub-paragraph (b) (i) and (ii) are met."

ARTICLE IX

Subparagraph (b) of paragraph (1) of Article 15 (Capital Gains) of the Convention shall be deleted and replaced by the following:

"(b) The gain is from the sale, exchange or other disposition of property described in sub-paragraph (2)(c) of Article 14 (Royalties)."

ARTICLE X

The following new Article shall be added as Article 15–A (Charitable Contributions):

"ARTICLE 15–A

"Charitable Contributions

"(1) In the computation of taxable income of a citizen or a resident of the United States for any taxable year under the revenue laws of the United States, there shall be treated as a charitable contribution under such revenue laws contributions to any organization created or organized under the laws of Israel (and constituting a charitable organization for the purpose of the income tax laws of Israel) if and to the extent such contributions would have been treated as charitable contributions had such organization been created or organized under the laws of the United States; provided, however, that this paragraph shall not apply to contributions in any taxable year in excess of 25 percent of taxable income for such year (in the case of a corporation) or of adjusted gross income for such year (in the case of an individual) from sources in Israel.

"(2) In the computation of tax liability of a resident of Israel for any taxation year under the income tax laws of Israel, there shall be treated as charitable contributions eligible for credit or deduction, as the case may be, under such income tax laws, gifts to any organization constituting a charitable organization for the purpose of the revenue laws of the United States, if and to the extent such contributions would have been treated as charitable contributions had such organization been a charitable organization for the purpose of the income tax laws of Israel; provided, however, that this paragraph shall not apply to contributions in any taxation year in excess of 25 percent of taxable income for such year from sources in the United States."

ARTICLE XI

Article 17 (Dependent Personal Services) of the Convention shall be deleted and replaced by the following:

"ARTICLE 17

"Dependent Personal Services

"(1) Except as provided in Articles 22 (Governmental Functions), 23 (Teachers), and 24 (Students and Trainees), wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State. Except as provided by paragraph (2) and in Articles 20 (Private Pensions and Annuities), 22 (Governmental Functions), 23 (Teachers), and 24 (Students and Trainees), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

"(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if—

"(a) He is present in that other Contracting State for a period or periods aggregating less than 183 days in the taxable year; and

"(b) He is an employee of a resident of, or of a permanent establishment maintained in, the first-mentioned Contracting State; and

"(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State; and

"(d) The remuneration is subject to tax in the first-mentioned Contracting State.

"(3) Notwithstanding paragraphs (1) and (2), remuneration derived by an employee of a resident of one of the Contracting States for labor or personal services performed as a member of the regular complement of a ship or aircraft operated in international traffic by a resident of that Contracting State may be taxed by that Contracting State."

ARTICLE XII

Clauses (i) and (ii) of subparagraph (a) of paragraph (1) of Article 19 (Amounts Received for Furnishing Personal Services of Others) of the Convention shall be deleted and replaced by the following:

"(a) (i) The person for whom the services were furnished designated the person or persons who would render the services, whether or not he had the legal right to do so and whether or not the designation was made formally;

"(ii) The person for whom the services were furnished had the right to designate the person or persons who would render the services; or"

ARTICLE XIII

Clause (ii) of paragraph (2) of Article 26 (Relief From Double Taxation) of the Convention shall be deleted and replaced by the following:

"(ii) Upon replayment or recoupment of the principal of the loan, the amount of the value in United States dollars received shall be treated as a refund for the year the loan was made of taxes paid to Israel for such year equal to the basis for such loan, and the amount of such credit against tax shall be recomputed notwithstanding the operation of any law or rule of law;"

ARTICLE XIV

Subparagraphs (c) and (d) of paragraph (2) of Article 28 (Mutual Agreement Procedure) of the Convention shall be deleted and replaced by the following:

"(c) To the same determination of the source of particular items of income;

"(d) To the same characterization of particular items of income; or

"(e) To the mode of application of Articles 15–A (Charitable Contributions) and 29 (Exchange of Information)."

ARTICLE XV

Paragraph (1) of Article 29 (Exchange of Information) of the Convention shall be deleted and replaced by the following:

"(1) The competent authorities of the Contracting States shall exchange such information as is pertinent to carrying out the provisions of this Convention or preventing fraud or fiscal evasion in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment, including judicial determination, or collection of the taxes which are the subject of the Convention."

ARTICLE XVI

1. This Protocol shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Protocol shall enter into force immediately after the expiration of thirty days following the date on which the instruments of ratification are exchanged and shall thereupon have effect in accordance with Article 31 of the Convention.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE at Washington, in duplicate, in the English and Hebrew languages, the two texts having equal authenticity, this 30th day of May 1980.

For the Government of the United States of America:

HAROLD H. SAUNDERS.

For the Government of the State of Israel:

EPHRAIM EVRON.

MAY 30, 1980.

HIS EXCELLENCY EPHRAIM EVRON, *Ambassador of Israel.*

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington on November 20, 1975 and amended by a Protocol which was signed today. In the process of negotiating this Convention, the Israeli delegation emphasized the necessity of including in the Convention additional provisions, such as an investment credit for foreign investment, which will create incentives to promote the flow of investment to Israel.

The United States delegation is not able to accept such provisions at this time. However, I wish to assume you that my Government realizes the importance your government attaches to the increase of investments in Israel. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of the United States investments in Israel, our Government would be prepared to re-open the discussions on provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Israeli Government to foreign investors and which would be consistent with the income tax policies of the United States, including treaty policies, with respect to other developing countries.

I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

(S) HAROLD H. SAUNDERS.

EMBASSY OF ISRAEL,
Washington, D.C., June 2, 1980.

THE SECRETARY OF STATE,
The Department of State,
Washington, D.C.

EXCELLENCY: I have the honor to acknowledge your note of May 30, 1980, which reads as follows:

"EXCELLANCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington on November 20, 1975 and amended by a Protocol which was signed today. In the process of negotiating this Convention, the Israeli delegation emphasized the necessity of including in the Convention additional provisions, such as an investment credit for foreign investment, which will create incentives to promote the flow of investment to Israel.

"The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Israel. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Israel, our Government would be prepared to re-open the discussions on provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Israeli Government to foreign investors and which would be consistent with the income tax policies of the United States, including treaty policies, with respect to other developing countries.

"I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

"Accept, Excellency, the renewed assurances of my highest consideration."

I confirm these understandings on half of the Government of Israel. These understandings constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Convention between the Government of the State of Israel and the Government of the United States of America with Respect to Taxes on Income signed at Washington on November 20, 1975.

Accept, Excellency, the renewed assurances of my highest consideration.

Ephraim Evron,
Ambassador.

May 30, 1980.

His Excellency Ephraim Evron,
Ambassador of Israel.

Excellency: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington on November 20, 1975 and amended by a Protocol which was signed today, and to confirm on behalf of the Government of the United States of America, the following understanding reached between the two Governments.

The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as an eligible recipient of the charitable contributions described in Article 15–A with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States. If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such Contracting State shall accept the certification of the administering agency of the other State as to such status for the purpose of determining the deductibility or creditability of such charitable contributions.

I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

(s) HAROLD H. SAUNDERS.

EMBASSY OF ISRAEL,
Washington, D.C., June 2, 1980.

THE SECRETARY OF STATE,
The Department of State,
Washington, D.C.

EXCELLENCY: I have the honor to acknowledge your note of May 30, 1980, which reads as follows:

"EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington on November 20, 1975 and amended by a Protocol which was signed today, and to confirm on behalf of the Government of the United States of America, the following understanding reached between the two Governments.

"The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as an eligible recipient of the charitable contributions described in Article 15–A with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States. If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such Contracting State shall accept the certification of the administering agency of the other State as to such status for the purpose of determining the deductibility or creditability of such charitable contributions.

"I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

"Accept, Excellency, the renewed assurances of my highest consideration."

I confirm these understandings on behalf of the Government of Israel. These understanding constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Convention between the Government of the State of Israel and the Government of the United States of America with Respect to Taxes on Income signed at Washington on November 20, 1975.

Accept, Excellency, the renewed assurances of my highest consideration.

EPHRAIM EVRON,
Ambassador.

MAY 30, 1980.

HIS EXCELLENCY EPHRAIM EVRON,
Ambassador of Israel.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington on November 20, 1975 and amended by a Protocol which was signed today, and to confirm, on behalf of the Government of the United States of America, the following understanding reached between the two Governments.

The Government of the United States and the Government of Israel agree that exchange of information shall be made in accordance with Article (Exchange of Information) of the Convention.

It is understood, however, that due to a lack of technical capability, and to a severe manpower shortage in revenue administration in Israel, it is impractical, at this time, for the Government of Israel to exchange information on a routine basis with respect to receipts from Israel of dividends, interest and royalties by residents of the United States as well as any information not existing in the Finance Minister's files. However, as soon as the above deficiencies are remedied, the Government of Israel will provide information made available by advances in its capability of acquiring and compiling tax information.

I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

Accept, **Excellency,** the renewed assurances of my highest consideration.

For the Secretary of State:

(S) HAROLD H. SAUNDERS.

EMBASSY OF ISRAEL,
Washington, D.C., May 30, 1980.

The SECRETARY OF STATE,
The Department of State,
Washington, D.C.

EXCELLENCY: I have the honor to acknowledge your note of May 30, 1980, which reads as follows:

"EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes of income, signed at Washington on November 20, 1975 and amended by a protocol which was signed today, and to confirm, on behalf of the Government of the United States of America, the following understandings reached between the two governments.

"The Government of the United States and the Government of Israel agree that exchange of information shall be made in accordance with Article 29 (Exchange of Information) of the Convention.

"It is understood, however, that due to a lack of technical capability, and to a severe manpower shortage in revenue administration in Israel, it is impractical, at this time, for the Government of Israel to exchange information a routine basis with respect to receipts from Israel of dividends, interest and royalties by residents of the United States as well as any information not existing in the Finance Minister's files. However, as soon as the above deficiencies are remedied, the Government of Israel will provide information made available by advances in its capability of acquiring and compiling tax information.

"I have the honor to propose that this note and your Excellency's reply confirming the above points of understanding on behalf of your Government shall be regarded as constituting an agreement between our two Governments concerning this matter, which will enter into force on the date of the entry into force of the Convention between the Government of the United States of America and the Government of the State of Israel with respect to taxes on income, signed at Washington November 20, 1975.

"Accept, Excellency, the renewed assurances of my highest consideration."

I confirm these understandings on behalf of the Government of Israel. These understandings constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Convention between the Government of the State of Israel and the Government of the United States of America with Respect to Taxes on Income signed at Washington on November 20, 1975.

Accept, Excellency, the renewed assurances of my highest consideration.

Sincerely,

EPHRAIM EVRON, *Ambassador.*

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96TH CONGRESS } SENATE { EXECUTIVE
2d Session } { N

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES, ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER 17, 1979 AND SIGNED ON BEHALF OF THE UNITED STATES OF AMERICA ON DECEMBER 21, 1979

AUGUST 4, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 4, 1980.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a copy of the International Convention Against the Taking of Hostages, adopted by the United Nations General Assembly on December 17, 1979 and signed on behalf of the United States of America on December 21, 1979. The report of the Department of State with respect to the Convention is also transmitted for the information of the Senate.

In recent years, we have witnessed an unprecedented and intolerable increase in acts of terrorism involving the taking of hostages in various parts of the world. Events have clearly demonstrated that no country or region is exempt from the human tragedy and immense costs which almost invariably result from such criminal acts. Consequently, the urgent need to take positive action against these manifestations of international terrorism has become readily apparent. Although the penal codes of most States contain provisions proscribing assault, extortion, kidnapping, and other serious crimes inherent in hostage-taking incidents, and international framework for cooperation among States directed toward prevention of such incidents and ensuring punishment of offenders, wherever found, has not previously existed.

The Convention creates a legal mechanism whereby persons alleged to have committed offenses under the Convention will be prosecuted or extradited if apprehended within the jurisdiction of a State Party, wherever the offense was committed. In essence, the Convention imposes binding legal obligations upon States Parties either to submit for prosecution or to extradite any person within their jurisdiction who commits an act of hostage-taking (as defined in Article 1), attempts to commit such an act, or participates as an accomplice of anyone who commits or attempts to commit such an act. A State Party is subject to these obligations without regard to the place where the alleged act covered by Article 1 was committed.

Article 1 of the Convention declares that the act or offense of taking of hostages is committed by any person who seizes or detains and threatens to kill, injure, or continue to detain another person (the "hostage") in order to compel a third party (a State, an international intergovernmental organization, a natural or juridical person, or a group of persons) to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage. States Parties to the Convention will also be obligated to cooperate in preventing hostage-taking offenses by means of internal preventive measures, exchange of information, and coordination of enforcement activities.

This Convention is a vitally important new element in the campaign against the scourge of international terrorism in general and the heinous crime of hostage-taking in particular. I hope that all States will become Parties to this Convention, and that it will be applied universally. I recommend, therefore, that the Senate give early and favorable consideration to this Convention.

JIMMY CARTER.

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LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 9, 1980.

The PRESIDENT,
The White House.

The PRESIDENT:

I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the International Convention Against the Taking of Hostages, adopted by the United Nations General Assembly on December 17, 1979 and signed on behalf of the United States of America on December 21, 1979.

Pursuant to a proposal by the Federal Republic of Germany that was strongly supported by the United States, the United Nations General Assembly adopted Resolution 31/103 in 1976 which established an *ad hoc* committee of 35 Member States (including the United States) to draft an international convention against the taking of hostages. During sessions in 1977, 1978, and early 1979, the *ad hoc* committee was largely able to complete a recommended draft convention which was forwarded to the 34th Session of the U.N. General Assembly for consideration in the Sixth (Legal) Committee. A Working Group of the Sixth Committee resolved the remaining issues in a manner that permitted consensus adoption of the Convention by the full Sixth Committee on December 7, 1979 and by the General Assembly itself ten days later.

The Convention was developed in response to an urgent need. Throughout the world in recent years, there has been a dramatic and intolerable increase in acts of terrorism involving the taking of hostages. Such outrageous criminal acts are necessarily fraught with human tragedy and immense costs for all concerned. Although the penal codes of most States contain provisions proscribing the serious crimes inherent in hostage-taking incidents (e.g., assault, extortion, and kidnaping), an international framework for cooperation among States directed toward prevention of such incidents and ensuring punishment of offenders, wherever found, was lacking prior to the conclusion of this Convention, except with respect to crimes against internationally protected persons (including diplomats) which are already covered by the New York Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

The Hostages Convention creates a legal mechanism which requires submission for prosecution or extradition of persons alleged to have committed offenses under the Convention, if they are apprehended within the jurisdiction of a State Party. This mechanism is essentially the same as that utilized in the fields of intereference with civil aviation and protection of diplomats—specifically in The Hague

(Aircraft Hijacking), Montreal (Aircraft Sabotage), and New York Conventions. The United States is a Party to each of these conventions. Many of the provisions in the Hostages Convention are modeled on provisions in the Hague, Montreal, and New York Conventions.

In brief, the Hostages Convention imposes binding legal obligations upon States Parties either to submit for prosecution or to extradite any person within their jurisdiction who commits an act of hostage-taking (as defined in Article 1), attempts to commit such an act, or participates as an accomplice of any one who commits or attempts to commit such an act. States Parties are subject to these obligations without regard to the place where the alleged offender committed the acts covered by Article 1.

Article 1 specifies the offense covered by the Convention. Paragraph 1 of Article 1 declares that the offense of taking of hostages is committed by any person who seizes or detains and threatens to kill, injure, or continue to detain another person ("the hostage") in order to compel a third party (a State, an international intergovernmental organization, a natural or juridical person, or a group of persons) to do or to abstain from doing any act as an explicit or implicit condition for the release of the hostage(s). Paragraph 2 of this Article states that an offense under the Convention is also committed by any person who attempts to commit an act of hostage-taking or participate as an accomplice of any one who commits or attempts to commit an act of hostage-taking.

Article 2 requires States Parties to make the offenses enumerated in Article 1 punishable by appropriate penalties commensurate with the grave nature of those offenses.

Article 3 provides that the State Party in whose territory a hostage is held shall take all appropriate measures to assist the hostage while held and secure his release and to facilitate his departure after release. Article 3 also requires a State Party gaining custody of any object which an offender has obtained as a result of his offense to return the object to the hostage, to the third party referred to in Article 1, or to the appropriate authorities of that third party, as the case may be.

Pursuant to Article 4, States Parties are required to cooperate in the prevention of Article 1 offenses by taking certain measures to prevent preparations for such offenses and by exchanging information.

Under Article 5, each State Party must establish its jurisdiction over the offenses set forth in Article 1 when the offense is committed in its territory or on board a ship or aircraft registered in that State, when the alleged offender is a national of that State, and when the offense is committed in order to compel that State to do or abstain from doing any act. Moreover, each State Party is also given options to establish jurisdiction both over offenses committed by stateless persons whose habitual residence is in the territory of that State and in cases where the hostage is a national of that State. Paragraph 2 of this Article also requires jurisdiction to be established by a State Party when the alleged offender is in its territory and is not extradited to any of the States with jurisdiction under the Convention. Paragraph 3 of Article 5 makes clear that the Convention does not preclude criminal jurisdiction exercised in accordance with internal law.

Articles 6, 7, and 11 specify the manner in which States Parties shall provide information regarding Article 1 offenses, the guidelines for detention of alleged offenders for the purpose of prosecution or extradition, the rights of alleged offenders, the requirement to notify the UN Secretary-General of the final outcome of criminal proceedings, and the obligations of mutual assistance among States Parties with regard to criminal proceedings.

In a provision of crucial importance to the Convention, Article 8 declares that a State Party which does not extradite an alleged offender found in its territory shall "without exception whatsoever and whether or not the offense was committed in its territory" submit the case to its own competent authorities for the purpose of prosecution.

Article 9 states that no State Party shall extradite an alleged offender if that State has substantial grounds for believing that the extradition request has been made for the purpose of persecution (based on race, religion, nationality, ethnic origin, or political opinion) *or* the appropriate authorities of the State "entitled to exercise rights of protection" over the individual cannot communicate with him, and his position may be prejudiced thereby. As a result of the qualifying phrases "pursuant to this Convention" in paragraph 1 and "with respect to the offenses as defined in this Convention" in paragraph 2, Article 9 will not affect normal United States extradition practice, which is carried out pursuant to bilateral extradition treaties.

Article 10 amends existing extradition treaties to include the offenses defined in Article 1 as extraditable offenses and provides that they shall be extraditable offenses between States which do not make extradition conditional on an extradition treaty.

Article 12 ensures that all offenders under the Convention will be subject to prosecution or extradition by States Parties under either the Hostages Convention itself or the Geneva Conventions of 1949 and the 1977 Additional Protocols to those conventions. In short, the prosecute or extradite rule of the Hostages Convention will apply in every case involving an Article 1 offense, unless the Geneva Conventions or Protocols apply to a particular such offense and the concerned State Party to the Hostages Convention is legally bound in that case by the Geneva Conventions and Protocols to prosecute or extradite the alleged offender for offenses also covered by the Hostages Convention.

In Hostage-taking cases involving no international elements, the Convention is not applicable, as provided by Article 13. Articles 14 and 15 declare respectively, that the Convention shall not be interpreted to justify action contrary to the UN Charter and shall not effect treaties on asylum in force as of December 17, 1979, as between States which are Parties to those treaties. Article 15 is identical to Article 12 of the New York Convention. The United States is not a party to any such treaties and is thus unaffected by this provision. Article 16 sets forth a dispute settlement mechanism identical to that contained in Article 13 of the New York Convention.

The Convention will enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession.

Recommended legislation necessary to implement the Convention will be submitted to the Congress.

Consensus adoption of this Convention by the representatives of the international community in the UN General Assembly during

December, 1979 could hardly have been more timely. Early action by the United States with respect to ratification of this Convention would be equally appropriate, particularly in view of the fact that the United States referred to the Convention in its Memorial to the International Court of Justice in the *Case concerning United States Diplomatic and Consular Staff in Tehran*. The United States should be among the leaders in formally endorsing this agreement for combating international crime and terrorism.

The Department of Justice favors the ratification of this Convention. I hope that the Senate will consider the Convention and give its advice and consent to ratification as soon as possible.

Respectfully submitted.

WARREN CHRISTOPHER.

INTERNATIONAL CONVENTION AGAINST THE TAKING OF HOSTAGES

The States Parties to this Convention,

Having in mind the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of friendly relations and co-operating among States,

Recognizing in particular that everyone has right to life, liberty and security of person, as set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights,

Reaffirming the principle of equal rights and self-determination of peoples as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, as well as in other relevant resolutions of the General Assembly,

Considering that the taking of hostages is an offence of grave concern to the international community and that, in accordance with the provisions of this Convention, any person committing an act of hostage taking shall either be prosecuted or extradited.

Being convinced that it is urgently necessary to develop international co-operation between States in devising and adopting effective measures for the prevention, prosecution and punishment of all acts of taking of hostages as manifestations of international terrorism,

Have agreed as follows:

Article 1

1. Any person who seizes or detains and threatens to kill, to injure or to continue to detain another person (hereinafter referred to as the "hostage") in order to compel a third party, namely, a State, an international intergovernmental organization, a natural or juridical person, or a group of persons, to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage commits the offence of taking hostages ("hostage-taking") within the meaning of this Convention.

2. Any person who:

(a) attempts to commit an act of hostage-taking, or

(b) participates as an accomplice of anyone who commits or attempts to commit an act of hostage-taking likewise commits an offence for the purposes of this Convention.

Article 2

Each State Party shall make the offences set forth in article 1 punishable by appropriate penalties which take into account the grave nature of those offences.

Article 3

1. The State Party in the territory of which the hostage is held by the offender shall take all measures it considers appropriate to ease the situation of the hostage, in particular, to secure his release and, after his release, to facilitate, when relevant, his departure.

2. If any object which the offender has obtained as a result of the taking of hostages comes into the custody of a State Party, that State Party shall return it as soon as possible to the hostage or the third party refererd to in article 1, as the case may be, or to the appropriate authorities thereof.

Article 4

States Parties shall co-operate in the prevention of the offences set forth in article 1, particularly by:

(*a*) taking all practicable measures to prevent preparations in their respective territories for the commission of those offences within or outside their territories, including measures to prohibit in their territories illegal activities of persons, groups and organizations that encourage, instigate, organize or engage in the perpetration of acts of taking of hostages;

(*b*) exchanging information and co-ordinating the taking of administrative and other measures as appropriate to prevent the commission of those offences.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over any of the offences set forth in article 1 which are committed:

(*a*) in its territory or on board a ship or aircraft registered in that State;

(*b*) by any of its nationals or, if the State considers it appropriate, by those stateless persons who have their habitual residence in its territory;

(*c*) in order to compel that State to do or abstain from doing any act; or

(*d*) with respect to a hostage who is a national of that State, if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 1 in cases where the alleged offender is present in its territory and it does not extradite him to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied that the circumstances so warrant, any State Party in the territory of which the alleged offender is present shall, in accordance with its laws, take him into custody or take other measures to ensure his presence for such time as is necessary to enable any

criminal or extradition proceedings to be instituted. That State Party shall immediately make a preliminary inquiry into the facts.

2. The custody or other measures referred to in paragraph 1 of this article shall be notified without delay directly or through the Secretary-General of the United Nations to:

(*a*) the State where the offense was committed;

(*b*) the State against which compulsion has been directed or attempted;

(*c*) the State of which the natural or juridical person against whom compulsion has been directed or attempted is a national;

(*d*) the State of which the hostage is a national or in the territory of which he has his habitual residence;

(*e*) the State of which the alleged offender is a national or, if he is a stateless person, in the territory of which he has his habitual residence;

(*f*) the international intergovernmental organization against which compulsion has been directed or attempted;

(*g*) all other States concerned.

3. Any person regarding whom the measures referred to in paragraph 1 of this article are being taken shall be entitled:

(*a*) to communicate without delay with the nearest appropriate representative of the State of which he is a national or which is otherwise entitled to establish such communication or, if he is a stateless person, the State in the territory of which he has his habitual residence;

(*b*) to be visited by a representative of that State.

4. The rights referred to in paragraph 3 of this article shall be exercised in conformity with the laws and regulations of the State in the territory of which the alleged offender is present subject to the proviso, however, that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of this article are intended.

5. The provisions of paragraphs 3 and 4 of this article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with paragraph 1(b) of article 5 to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. The State which makes the preliminary inquiry contemplated in paragraph 1 of this article shall promptly report its findings to the States or organization referred to in paragraph 2 of this article and indicate whether it intends to exercise jurisdiction.

Article 7

The State Party where the alleged offender is prosecuted shall in accordance with its laws communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States concerned and the international intergovernmental organizations concerned.

Article 8

1. The State Party in the territory of which the alleged offender is found shall, if it does not extradite him, be obliged, without exception

whatsoever and whether or not the offence was committed in its territory, to submit the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any ordinary offence of a grave nature under the law of that State.

2. Any person regarding whom proceedings are being carried out in connexion with any of the offences set forth in article 1 shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which he is present.

Article 9

1. A request for the extradition of an alleged offender, pursuant to this Convention, shall not be granted if the requested State Party has substantial grounds for believing:

(*a*) that the request for extradition for an offence set forth in article 1 has been made for the purpose of prosecuting or punishing a person on account of his race, religion, nationality, ethnic origin or political opinion; or

(*b*) that the person's position may be prejudiced:

(i) for any of the reasons mentioned in subparagraph (*a*) of this paragraph, or

(ii) for the reason that communication with him by the appropriate authorities of the State entitled to exercise rights of protection cannot be effected.

2. With respect to the offences as defined in this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent that they are incompatible with this Convention.

Article 10

1. The offences set forth in article 1 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may at its option consider this Convention as the legal basis for extradition in respect of the offences set forth in article 1. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 1 as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. The offences set forth in article 1 shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories

of the States required to establish their jurisdiction in accordance with paragraph 1 of article 5.

Article 11

1. States Parties shall afford one another the greatest measure of assistance in connexion with criminal proceedings brought in respect of the offences set forth in article 1, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 12

In so far as the Geneva Conventions of 1949 for the protection of war victims or the Protocols Additional to those Conventions are applicable to a particular act of hostage-taking, and in so far as States Parties to this Convention are bound under those conventions to prosecute or hand over the hostage-taker, the present Convention shall not apply to an act of hostage-taking committed in the course of armed conflicts as defined in the Geneva Conventions of 1949 and the Protocols thereto, including armed conflicts mentioned in article 1, paragraph 4, Additional Protocol I of 1977, in which peoples are fighting against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

Article 13

This Convention shall not apply where the offence is committed within a single State, the hostage and the alleged offender are nationals of that State and the alleged offender is found in the territory of that State.

Article 14

Nothing in this Convention shall be construed as justifying the violation of the territorial integrity or political independence of a State in contravention of the Charter of the United Nations.

Article 15

The provisions of this Convention shall not affect the application of the Treaties on Asylum, in force at the date of the adoption of this Convention, as between the States which are parties to those Treaties; but a State Party to this Convention may not invoke those Treaties with respect to another State Party to this Convention which is not a party to those treaties.

Article 16

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one them, be submitted to arbitration. If within six months from the date of the request for

arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 17

1. This Convention is open for signature by all States until 31 December 1980 at United Nations Headquarters in New York.

2. This Convention is subject to ratification. The instruments of ratification shall be deposited with the Secretary-General of the the United Nations.

3. This Convention is open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the Secretary-General of the United Nations.

2. For each State ratifying or acceding to the Convention after the deposit of the twenty-second instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 19

1. Any State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which notification is received by the Secretary-General of the United Nations.

Article 20

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at New York on 18 December 1979.

I hereby certify that the foregoing text is a true copy of the International Convention against the taking of hostages, adopted by the

General Assembly of the United Nations on 17 December 1979, the original of which is deposited with the Secretary-General of the United Nations.

For the Secretary-General:
The Legal Counsel.

United Nations, New York, March 24, 1980.

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96th Congress } SENATE { Executive
2d Session } { O

TAX CONVENTION WITH JAMAICA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (THE CONVENTION), TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT KINGSTON ON MAY 21, 1980

August 4, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 11) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 4, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, a Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Kingston on May 21, 1980. I also transmit the report of the Department of State with respect to the Convention.

In general, the Convention follows the pattern of the United States model income tax convention, although there are some accommodations to Jamaica's status as a developing country. For example, business profits of an enterprise of one country, as in the model convention, may be taxed by the other only if they are attributable to a permanent establishment in the other country. In the proposed Convention, however, the definition of a permanent establishment is more broadly drawn. Similarly, in the United States model, an individual who is a resident of one State may be taxed by the other on income from personal services performed in the other State only if certain thresholds are passed, but in the proposed Convention, the time threshold is shorter for independent services and a dollar threshold has been added.

The exchange of notes sets forth certain understandings between the two Governments. It deals, among other matters, with the conditions under which the United States would allow a foreign tax credit for Jamaican income taxes on bauxite profits. The exchange of notes also confirms the fact that the Convention has been designed to cover a substitute tax which may be imposed by Jamaica "in lieu of" the corporate income tax on such profits if such substitute tax meets the requirement of section 903 of the Internal Revenue Code.

I recommend that the Senate give early and favorable consideration to the Convention and its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, July 17, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Kingston on May 21, 1980.

The Convention will replace the extension in 1959 to Jamaica of the 1945 Income Tax Convention between the United States and the United Kingdom, as amended by Protocols of June 6, 1946, May 25, 1954, and August 16, 1957.

The Convention, in general, follows the pattern of the United States model income tax convention, although there are some deviations to accommodate Jamaica's status as a developing country. For example, as in the model convention, business profits of an enterprise of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. In the proposed Convention, however, the definition of a permanent establishment is more broadly drawn. Similarly, in the United States model, an individual who is a resident of one State may be taxed by the other on income from personal services performed in the other State only if certain tests are met, but in the proposed Convention, the time threshold is shorter for independent services and a dollar threshold is added. With respect to entertainers, the dollar threshold is lower than in the United States model.

Maximum rates of tax are established on a reciprocal basis for the taxation by the source country of dividends, interest and royalties, which, in general, exceed the rates specified in the United States model. The rates, however, are consistent with those established in other United States treaties with developing countries. For dividends, the maximum rate, in general, is 15 percent, as in the United States model, though the lower 10 percent rate provided for subsidiary dividends exceeds the rate specified in the United States model.

Interest is taxable at the source at a maximum rate of 12.5 percent, except that interest received, guaranteed, or insured by a Contracting State or instrumentality is exempt. Royalties, including motion picture royalties, are subject to a maximum rate of tax at source of 10 percent.

The Convention, with minor deviations from the model provisions, contains the usual rules relating to real property income, the treatment of students, pensioners and government employees, nondiscrimination, and administrative cooperation. The capital gain provision provides for tax on the alienation of stock of a company or interest in a partnership, trust or estate if the value of such entities are derived principally from immovable property located in the other Contracting State.

The Convention differs from the United States model by including provisions dealing with directors' fees and teachers.

The exchange of notes sets forth certain understandings between the two Governments. It deals, among other matters, with the conditions under which the United States would allow a foreign tax credit for Jamaican income taxes on bauxite profits. The exchange of notes also confirms the fact that the Convention has been designed to cover a substitute tax which may be imposed by Jamaica "in lieu of" the corporate income tax on such profits if such substitute tax meets the requirement of section 903 of the Internal Revenue Code.

The Convention will enter into force upon the exchange of instruments of ratification. The provisions of the Convention shall have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

Upon these provisions becoming effective, the corresponding provisions of the 1945 income tax convention with the United Kingdom, as amended, will cease to have effect between the United States and Jamaica.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted.

EDMUND S. MUSKIE.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of Jamaica, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) by the laws of either Contracting State; or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of this Convention except paragraph 4 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Residence)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect.

4. The provisions of paragraph 3 shall not affect:

(a) the benefits conferred by a Contracting State under paragraphs 1 b) and 4 of Article 19 (Pensions, etc.), Article 24 (Relief from Double Taxation), Article 25 (Non-Discrimination) and Article 26 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 20 (Government Service), 21 (Students and Trainees), 22 (Teachers and Researchers) and 28 (Diplomatic Agents and Consular Officers) upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income imposed by a Contracting State.

2. The existing taxes to which this Convention shall apply are:

(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code, but excluding the accumulated earnings tax (except as provided in paragraph 5 of Article 10 (Dividends)) and the personal holding company tax.

(b) in Jamaica: the income tax, the company profits tax, and the transfer tax.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. In addition, the Convention shall apply also to a tax imposed by Jamaica in lieu of the income tax or the company profits tax covered by paragraph 2(b). The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

4. For the purpose of Article 25 (Non-Discrimination), this Convention shall also apply to taxes of every kind and description imposed by a Contracting State or a political sub-division or local authority thereof. For the purpose of Article 27 (Exchange of Information and Administrative Assistance), this Convention shall also apply to taxes of every kind imposed by a Contracting State.

ARTICLE 3

General Definitions

1. For the purpose of this Convention, unless the context otherwise requires:

(a) the term "person" includes an individual, a partnership, a company, an estate, a trust, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise or undertaking carried on by a resident of a Contracting State and an enterprise or undertaking carried on by a resident of the other Contracting State;

(d) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in the other Contracting State;

(e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Jamaica: the Minister responsible for finance or his authorized representative;

(f) the term "United States" means the United States of America and when used in a geographical sense includes the States thereof and the District of Columbia, the territorial waters of the United States, and any area outside the States and the District of Columbia which in accordance with international law and the laws of the United States is an area within which the rights of the United States with respect to the natural resources of the seabed and subsoil may be exercised;

(g) the term "Jamaica" means the island of Jamaica, the Morant Cays, the Pedro Cays and their Dependencies and when used in a geographical sense includes the territorial waters of Jamaica and any area outside such territorial waters which in accordance with international law and the laws of Jamaica is an area within which the rights of Jamaica with respect to the natural resources of the seabed and subsoil may be exercised;

(h) the term "Contracting State" means the United States or Jamaica, as the context requires;

(i) the term "national" means:

(i) in relation to the United States—

(*a*) any individual who is a citizen of the United States;

(*b*) any company, association or other entity deriving its status as such from the laws of the United States or any political subdivision thereof;

(ii) in relation to Jamaica—

(*a*) any individual who is a citizen of Jamaica;

(*b*) any company, association or other entity deriving its status as such from the laws of Jamaica.

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article 26 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Residence

1. For the purposes of this Convention:

(a) the term "resident of Jamaica" means:

(i) any person, other than a company, resident in Jamaica for the purposes of Jamaican tax; but in the case of a partnership, estate, or trust, only to the extent that the income derived by such partnership, estate, or trust is subject to Jamaican tax as the income of a resident either in its hands or in the hands of its partners or beneficiaries; and

(ii) a company whose business is managed and controlled in Jamaica.

(b) the term "resident of the United States" means:

(i) any person, other than a company, resident in the United States for the purposes of United States tax; but in the case of a partnership, estate, or trust, only to the extent that the income derived by such partnership, estate, or trust is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and

(ii) a company created or organized under the laws of the United States or a political subdivision thereof.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, the individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident of the State in which he has a permanent home available; if such individual has a permanent home available in both States, or in neither State, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which the individual's center of vital interests cannot be determined, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, such company shall be considered to be outside the scope of this Convention except for purposes of paragraph 2 of Article 10 (Dividends), Article 25 (Non-Discrimination), Article 26 (Mutual Agreement Procedure), Article 27 (Exchange of Information and Administrative Assistance) and Article 29 (Entry Into Force).

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

5. Where under any provision of this Convention income arising in one of the Contracting States is relieved in whole or in part from tax in that Contracting State and, under the law in force in the other Contracting State a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State during the calendar year such income accrues or the next succeeding calendar year.

ARTICLE 5

Permanent Establishment

For the purposes of this Convention, except as otherwise specified in this Article, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a store or premises used as a sales outlet;

(g) a warehouse, in relation to a person providing storage facilities for others;

(h) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources;

(i) a building site or construction, assembly, installation, or dredging project, or a drilling rig or ship used for the exploration or development of natural resources within a Contracting State, but only if such site, project or activity continues within that State for a period or periods aggregating more than 183 days in any twelve-month period (including the period of any supervisory activity connected therewith), provided that a permanent establishment shall not exist in any taxable year in which site, project or activity continues within that State for a period or periods aggregating less than 30 days in that taxable year;

(j) the furnishing of services, including consultancy, management and technical, and supervisory services, within a Contracting State by an enterprise through employees or other personnel, but only if (i) activities of that nature continue within that State for a period or periods aggregating more than 90 days in any twelve-month period, provided that a permanent establishment shall not exist in any taxable year in which such services are rendered in that State for a period or periods aggregating less than 30 days in that taxable year; or (ii) the services are performed within that State for a related enterprise (within the meaning of paragraph 3 of Article 9 (Associated Enterprises));

(k) the maintenance of substantial equipment or machinery within a Contracting State but only if such equipment or machinery is maintained within that State for a period of more than 120 consecutive days, provided that a permanent establishment shall not exist in any taxable year in which such equipment or machinery is maintained within that State for a period or periods aggregating less than 30 days in that taxable year.

3. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include any one or more of the following:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. If an enterprise of a Contracting State does not have a permanent establishment in the other Contracting State under paragraphs 1, 2, and 3, but goods or merchandise are either:

(a) subjected to processing in that other Contracting State by another person (whether or not purchased in that other Contracting State); or

(b) purchased in that other Contracting State (and such goods or merchandise are not subjected to processing outside that other Contracting State)

then such enterprise shall be considered to have a permanent establishment in that other Contracting State to the extent that all or part of such goods or merchandise is sold by or on behalf of such enterprise for use, consumption, or disposition in that other Contracting State.

5. Notwithstanding the provisions of paragraphs 1 and 2, a person (other than an agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

(a) he has and habitually exercises in the first-mentioned State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph (subject to the provisions of paragraph 4); or

(b) he habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise and additional activities conducted in that State on behalf of the enterprise have contributed to the conclusion of the sale of such goods or merchandise.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of independent status within the meaning of this paragraph if the transactions between the agent and the enterprise were not made under arm's length conditions.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraph 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the busness profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably allocable to the income of that permanent establishment whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, the provisions of those Articles shall, except as otherwise specifically provided therein, not be affected by the provisions of this Article.

7. For the purposes of this Convention "business profits" means income derived from the conduct of any trade or business including the rental of tangible personal (movable) property and the furnishing of the personal services of another person, but not including income from the rental or licensing of cinematograph films or films or tapes used for radio or television broadcasting and not including income derived by an individual from the performance of personal services either as an employee or in an independent capacity.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For purposes of this Article, profits from the operation in international traffic of ships or aircraft include profits derived from the rental of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) shall be taxable only in that State to the extent used for the transport of goods or merchandise in international traffic.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where an enterprise subject to the taxing jurisdiction of a Contracting State and any other enterprise are related and where such related enterprises make arrangements or impose conditions between themselves which are different from those which would be made between independent enterprises, any income, deductions, credits or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such enterprises may be taken into account in computing the amount of the income subject to tax and the taxes payable by such enterprise.

2. Where a redetermination has been made by a Contracting State to the income of an enterprise in accordance with paragraph 1, then

the other Contracting State shall, if it agrees with such redetermination and if necessary to prevent double taxation, make a corresponding adjustment to the income of the related enterprise in such other Contracting State. In the event the other Contracting State disagrees with such redetermination, the two Contracting States shall endeavor to reach agreement in accordance with Article 26 (Mutual Agreement Procedure).

3. For the purposes of this Convention an enterprise is related to another enterprise if either enterprise owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which owns, directly or indirectly, 10 per cent of the voting stock of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. The income of a Jamaican company derived from the manufacture in Jamaica of approved products under the tax incentive legislation of Jamaica (as in effect on the date of signature of this Convention or as the competent authorities may agree pursuant to Article 26 (Mutual Agreement Procedure)) shall not be subject to the United

States accumulated earnings tax. In addition, a company which is a resident of Jamaica shall be exempt from United States accumulated earnings tax if individuals (other than United States citizens) who are residents of Jamaica control, directly or indirectly, throughout the last half of the taxable year more than 75 per cent of the entire voting power in that company.

6. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as

(a) such dividends are paid to a resident of that other State; or

(b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

even if the dividends paid consist wholly or partly of profit or income arising in that other State.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may be taxed in the Contracting State in which it arises and according to the laws of that State, but the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest.

3. Notwithstanding paragraphs 1 and 2, interest derived by

(a) a Contracting State or an instrumentality thereof (including the Bank of Jamaica, the Jamaica Development Bank, the Jamaica Mortgage Bank, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, the Federal Reserve Banks of the United States, and such other institutions of either Contracting State as the competent authorities may agree pursuant to Article 26 (Mutual Agreement Procedure)); or

(b) a resident of a Contracting State with respect to debt obligations guaranteed or insured by that Contracting State or an instrumentality thereof

shall be exempt from tax by the other Contracting State.

4. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures, as well as income similar to income from money lent.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed

base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.
the beneficial owner or between both of them and some other persons,

7. Where, by reason of a special relationship between the payer and beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films or films or tapes used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof but does not include payments for the use of tangible personal property.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the

royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the person deriving the royalties in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

6. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision or a local authority thereof, or a resident of that State. However, where the right or property for which the royalties are paid is used within the United States or Jamaica, as the case may be, the royalties shall be deemed to arise in the State in which the right or property is used.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income From Immovable Property (Real Property)) and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base regularly available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State.

4. Jamaica may impose its transfer tax upon the alienation of property in accordance with the Transfer Tax Act as in effect on the date of signature of this Convention.

5. Gains derived by a resident of a Contracting State from the alienation of

(a) Stock of a company the value of which is derived principally from immovable property situated in the other Contracting State; or

(b) An interest in a partnership, trust, or estate the value of which is derived principally from immovable property situated in the other Contracting State

may be taxed in the other State. For the purposes of this paragraph, the term "immovable property" includes the stock of a company referred to in subparagraph (a) or an interest in a partnership, trust, or estate referred to in sub-paragraph (b).

6. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.

7. Nothing in this Convention shall affect the right of a Contracting State to levy, according to its domestic law, a tax on gains from the alienation of property derived by an individual who is a resident of the other Contracting State and who was a national of the first-mentioned State at any time during the ten-year period immediately preceding the close of the taxable year in which such property was alienated.

ARTICLE 14

Independent Personal Services

1. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity may be taxed by that Contracting State. Except as provided in paragraph 2, such income shall be exempt from tax by the other Contracting State.

2. Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity in the other Contracting State may be taxed by that other Contracting State, if:

(a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;

(b) he is present in that other Contracting State for a period or periods aggregating 90 days or more in the taxable year; or

(c) the net income derived in the taxable year from residents of that other Contracting State for the performance of such services in the other Contracting State exceeds 5,000 United States dollars or its equivalent in Jamaican dollars.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 19 (Pensions, etc.) and 20 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) (i) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned; (ii) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and (iii) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State, unless (b) the net income derived in the taxable year by such resident from such employment exceeds 5,000 United States dollars or its equivalent in Jamaican dollars.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of a Contracting State for services rendered in the other Contracting State as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State, except where the amount of such fees and similar payments, not including expenses reimbursed to him or borne on his behalf, do not exceed four hundred United States dollars or its equivalent in Jamaican dollars per day for each day such resident is present in that other Contracting State for the purpose of performing such services.

ARTICLE 17

Investment or Holding Companies

If 25 percent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties. For the purpose of this Article, the source of dividends, interest or royalties shall be determined in accordance with paragraph 3 a), b), or c) of Article 24 (Relief From Double Taxation).

ARTICLE 18

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, not including expenses reimbursed to him or borne on his behalf, from

such activities do not exceed four hundred United States dollars or its equivalent in Jamaican dollars per day, or five thousand United States dollars or its equivalent in Jamaican dollars in the taxable year.

2. Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person to the extent that it is established that neither the entertainer or athlete, nor any person related thereto, has the right to participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

ARTICLE 19

Pensions, etc.

1. Subject to the provisions of paragraph 2 of Article 20 (Government Service)—

(a) pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State unless the past employment was performed in the other Contracting State while such person was a resident of that other State, in which case the pension and other similar remuneration may also be taxed in that other State; and

(b) social security payments and other public pensions paid by a Contracting State to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State unless the annuity was purchased in the other Contracting State while such person was a resident of that other State, in which case the annuity may also be taxed in that other State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

ARTICLE 20

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State; (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of, and a national of, that State.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State; (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State who was a national of that State at the time the services were rendered.

3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 16 (Directors' Fees), 18 (Artistes and Athletes) and 19 (Pensions, etc.) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 21

Students and Trainees

1. Payments which a student, who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentionel State for the purpose of his full-time education or training, receives for the purpose of his maintenance. education or training shall not be taxed in that State provided that such payments arise outside that State.

2. An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee or, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of—

(a) acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or a person related to such resident; or

(b) studying at a university or other recognized educational institution in that other State,

shall be exempt from tax by that other Contracting State for a period not exceeding 12 consecutive months with respect to his net income from personal services in an amount not in excess of 7,500 United States dollars or its equivalent in Jamaican dollars for any taxable year.

3. Notwithstanding Article 4 (Residence). an individual to whom paragraph 1 or 2 applies and who immediately before visiting or becoming temporarily present in a Contracting State was a resident of the other Contracting State may elect as an alternative to the provi-

sions of those paragraphs to be treated for all tax purposes of the first-mentioned State including this Convention, as a resident of that State. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph 1 or 2 and may not be revoked except with the consent of the competent authority of that State.

ARTICLE 22

Teachers and Researchers

1. An individual who visits a Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research at a university, college or other recognized educational institution in that Contracting State, and who was immediately before that visit a resident of the other Contracting State, shall be exempt from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose. An individual shall be entitled to the benefits of this paragraph only once.

2. This Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 23

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply if the person deriving the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed based situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits), Article 14 (Independent Personal Services), or Article 18 (Artists and Athletes), as the case may be, shall apply.

3. Notwithstanding paragraph 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 24

Relief from Double Taxation

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States

as a credit against the United States tax on income the appropriate amount of tax paid or accrued to Jamaica; and, in the case of a United States company owning at least 10 per cent of the voting power of a company which is a resident of Jamaica from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of tax paid or accrued to Jamaica by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to Jamaica, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid or accrued to Jamaica the taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of Jamaica, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of Jamaica (as it may be amended from time to time without changing the general principle hereof), Jamaica shall allow to a resident of Jamaica as a credit against Jamaican tax on income the appropriate amount of tax paid or accrued to the United States; and in the case of a Jamaican company owning at least 10 per cent of the voting power of a company which is a resident of the United States from which it receives dividends in any taxable year, Jamaica shall allow as a credit against Jamaican tax on income the appropriate amount of tax paid or accrued to the United States by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to the United States, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Jamaican tax on income from sources outside of Jamaica) provided by Jamaican law for the taxable year. For purposes of applying the Jamaican credit in relation to tax paid or accrued to the United States the taxes referred to in paragraph 2(a) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. For the purpose of thep receding paragraphs of this Article, the source of income or profits shall be determined in accordance with the following rules:

(a) dividends described in Article 10 (Dividends) shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State;

(b) interest, as defined in paragraph 2 of Article II (Interest). shall be deemed to arise in the State specified in paragraph 6 of Article II;

(c) royalties, as defined in paragraph 3 of Article 12 (Royalties), shall be deemed to arise in the State specified in paragraph 6 of Article 12;

(d) except for income or profits referred to subparagraphs a), b), or c), dividends and interest derived from a company described in paragraph 3 of Article 4 (Residence), and income described in paragraph 3 of Article 23 (Other Income), income or profits derived by a resident of a Contracting State which may be taxed in the other Contracting State (other than solely by reason of citizenship) in accordance with this Convention shall be deemed to arise in that other Contracting State.

ARTICLE 25

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article II (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall, in accordance with the provisions of paragraph 4 of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivsion or local authority thereof.

6. Nothing contained in this Article shall be construed—

(a) as obliging either Contracting State to grant to individuals not resident in that State any personal allowances, reliefs or credits for taxation purposes which are by law available only to individuals who are so resident; or

(b) as preventing Jamaica from charging a higher rate of income tax under section 48(5) of the Income Tax Act of Jamaica on a life insurance company which is a resident of the United States than on a regionalized life assurance company.

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national. A resident of a Contracting State who has a permanent establishment or a fixed base in the other Contracting State may present his case to the competent authority of either Contracting State.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent

authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding the time limits in the domestic law of the Contracting States, provided that, in the case of Jamaica, the taxpayer or the competent authority of the United States gives notice within the time limits in the domestic law of Jamaica to the competent authority of Jamaica that there may be a claim for tax adjustment.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

(a) to the attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) to the allocation of income, deductions, credits, or allowances between persons;

(c) to the characterization of particular items of income;

(d) to the application of source rules with respect to particular items of income; and

(e) to a meaning of a term.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. In cases where this Convention specifies a dollar amount, the competent authorities may agree to a high dollar amount.

ARTICLE 27

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with the Convention and, in addition, such information as is necessary for the prevention of fraud or tax evasion in relation to the taxes covered by the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that

other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public (order public).

4. Each of the Contracting States shall endeavour to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the present Convention from taxation imposed by such other Contracting State does not enure to the benefit of persons not entitled thereto.

5. Paragraph 4 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, public policy, or domestic law.

6. For the purpose of this Article, this Convention shall apply to taxes of every kind imposed by a Contracting State.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) in respect to other taxes, to taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

3. Upon the coming into effect of this Convention, the extension to Jamaica, effective January 1, 1959, of the Convention of 16th April, 1945, between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as modified by Supplementary Protocols of 6th June, 1946, 25th May, 1954, and 19th August, 1957, shall terminate. The provisions of the 1945 Convention, as amended, will cease to have effect with respect to the United States and Jamaica from the date on which the corresponding provisions of this Convention shall, for the first time, have effect according to the provisions of paragraph 2 of this Article.

ARTICLE 30

Termination

1. This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

(b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

DONE at Kingston, Jamaica, in duplicate this 21st day of May, 1980.

Ambassador

FOR THE UNITED STATES OF AMERICA

FOR JAMAICA

No. 141.

Excellency: I have the honor of commenting on the Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this agreement, the delegation from Jamaica emphasized the necessity of including in the Convention additional provisions which will create incentives to promote the flow of investment to Jamaica.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Jamaica. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Jamaica, our Government would be prepared to reopen the discussions in order to reflect in this Convention provisions which would minimize the conflicts between the United States tax system and the incentive proposed by the Government of Jamaica to foreign investors and which are consistent with the income tax policies of the United States, including tax Convention policies, with respect to other developing countries.

(2) In the course of discussions leading to the conclusion of the Convention signed today, the Jamaican delegation expressed its desire that Article 24 (Non-Discrimination) be drafted so as not to prevent Jamaica from imposing special taxes in pursuance of its economic development program, even if these taxes might otherwise violate the provisions of Article 24. The United States delegation explained that it could not agree to such a provision before having the opportunity to examine the specific aspects of such legislation. The United States delegation believes, furthermore, that it would be inappropriate to grant to the competent authorities the power to expand in this way the scope of the Convention by administrative action.

I would like to take this opportunity to assure you, however, that if at some time in the future Jamaica should enact legislation which would contravene the provisions of Article 24 of the Convention, the United States would be prepared to reopen discussions with the Government of Jamaica to determine whether it would be appropriate to except such legislation from the scope of Article 24.

(3) During discussions involving the Convention, representatives of the Government of Jamaica expressed their concern about whether certain amounts received by the Government of Jamaica from companies extracting and refining bauxite in Jamaica would qualify for the United States foreign tax credit. The Government of Jamaica expressed the belief that such amounts are in satisfaction of liability for the Jamaican company profits tax. The Government of Jamaica also expressed a willingness to consider a revision of its taxation of bauxite income to impose a tax "in lieu of" its company profits tax within the meaning of section 903 of the United States Internal Revenue Code. The Government of Jamaica desired assurance that such an "in lieu of" tax would be covered by the Convention.

The United States delegation discussed with the delegation of the Government of Jamaica the foreign tax credit requirements of sections 901 and 903 of the Internal Revenue Code. The United States delegation agreed that the language now included in paragraph 3 of Article 2 (Taxes Covered) of the Convention covers amounts paid "in lieu of" the company profits tax (or income tax) of Jamaica, if the Government of Jamaica decides to impose such a tax in the future. It is understood that such an "in lieu of" tax would have to meet the requirements of sections 903 of the Internal Revenue Code of 1954 to be covered by the Convention.

Accept, Excellency, the renewed assurances of my highest consideration.

The Embassy of the United States of America, Kingston, May 21. 1980.

I certify that the foregoing copy is a true and [illegible] copy of the original document, having been carefully examined and compared and found to agree word for word and figure for figure. In witness whereof I have signed and affixed [illegible] of America at Kingston, Jamaica [illegible] 21st [illegible] May............ 19..80...

David M. Ston

CONSUL OF THE UNITED STATES OF AMERICA
AT KINGSTON, JAMAICA.

MINISTRY OF FINANCE AND PLANNING,
Kingston, Jamaica, May 21, 1980.

No. 714/09

His Excellency LOREN LAWRENCE,
Ambassador of the United States of America.

EXCELLENCY: I have the honor to acknowledge receipt of your note of May 21, 1980 which reads as follows:

"I have the honor of commenting on the Convention between the Government of the United States of America and the Government of Jamaica for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, signed today. The following understandings were reached between the two Governments.

(1) In the process of negotiating this agreement, the delegation from Jamaica emphasized the necessity of including in the Convention additional provisions which will create incentives to promote the flow of investment to Jamaica.

The United States delegation is not able to accept such provisions at this time. However, I wish to assure you that my Government realizes the importance your Government attaches to the increase of investments in Jamaica. Should circumstances change, including any changes in the manner in which the United States imposes income tax upon the income of United States investments in Jamaica, our Government would be prepared to reopen the discussions in order to reflect in this Convention provisions which would minimize the conflicts between the United States tax system and the incentives proposed by the Government of Jamaica to foreign investors and which are consistent with the income tax policies of the United States, including tax Convention policies, with respect to other developing countries.

(2) In the course of discussions leading to the conclusion of the Convention signed today, the Jamaican delegation expressed its desire that Article 24 (Non-Discrimination) be drafted so as not to prevent Jamaica from imposing special taxes in pursuance of its economic development program, even if these taxes might otherwise violate the provisions of Article 24. The United States delegation explained that it could not agree to such a provision before having the opportunity to examine the specific aspects of such legislation. The United States delegation believes, furthermore, that it would be inappropriate to grant to the competent authorities the power to expand in this way the scope of the Convention by administrative action.

I would like to take this opportunity to assure you, however, that if at some time in the future Jamaica should enact legislation which would contravene the provisions of Article 24 of the Convention, the United States would be prepared to reopen discussions with the Government of Jamaica to determine whether it would be appropriate to except such legislation from the scope of Article 24.

(3) During discussions involving the Convention, representatives of the Government of Jamaica expressed their concern about whether certain amounts received by the Government of Jamaica from companies extracting and refining bauxite in Jamaica would qualify for the United States foreign tax credit. The Government of Jamaica expressed the belief that such amounts are in satisfaction of liability for the Jamaican company profits tax. The Government of Jamaica also expressed a willingness to consider a revision of its taxation of bauxite income to impose a tax "in lieu of" its company profits tax within the meaning of section 903 of the United States Internal Revenue Code. The Government of Jamaica desired assurance that such an "in lieu of" tax would be covered by the Convention.

The United States delegation discussed with the delegation of the Government of Jamaica the foreign tax credit requirements of sections 901 and 903 of the Internal Revenue Code. The United States delegation agreed that the language now included in paragraph 3 of Article 2 (Taxes Covered) of the Convention covers amounts paid "in lieu of" the company profits tax (or income tax) of Jamaica, if the Government of Jamaica decides to impose such a tax in the future. It is understood that such an "in lieu of" tax would have to meet the requirements of section 903 of the Internal Revenue Code of 1954 to be covered by the Convention.

Accept, Excellency, the renewed assurance of my highest consideration."

I have the honor to confirm that the foregoing understandings are in accord with the view of the Jamaican Government and are approved by it.

Accept, Excellence, the renewed assurances of my highest consideration.

HUGH SMALL,
Minister of Finance and Planning.

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[illegible]

Minister of Finance and Planning

96th Congress
2d Session

SENATE

Executive
P

TREATY WITH THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS, SIGNED AT RAROTONGA JUNE 11, 1980

September 3, 1980.—Treaty was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59-118 O
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate, the Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Convention.

This treaty is necessary to delimit the continental shelf and overlapping claims of jurisdiction resulting from the establishment of a 200 nautical mile fishery conservation zone off the coasts of American Samoa in accordance with the Fishery Conservation and Management Act of 1976, and the establishment of a 200 nautical mile zone by the Cook Islands.

In this connection, the status of four islands has also been resolved. The treaty satisfies the interest of the people of the Cook Islands that their claim to sovereignty over these four islands, inhabited by citizens of the Cook Islands and represented in the legislative and administrative branches of the Cook Islands Government, will not be encumbered by a conflicting and largely unsupported claim by the United States. The treaty meets the United States interest in securing a maritime boundary in accordance with equitable principles. It furthers U.S. foreign policy interests in the area by establishing a basis for friendly relations with the Cook Islands and by furthering our interest in a peaceful, secure, and stable South Pacific.

I am transmitting for the information of the Senate a diplomatic note from the Government of New Zealand confirming that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its doing so and a separate exchange of letters between the United States and the Cook Islands, signed on June 11, 1980, setting forth the understanding of each side that U.S. flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a disciminatory basis from seeking licenses to fish in the Cook Islands' 200 mile zone.

I recommend that the Senate give early consideration to the treaty and give its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 25, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to the transmittal thereof to the Senate for its advice and consent to ratification, the Treaty between the United States of America and the Cook Islands on Friendship and Delimitation of the Maritime Boundary between the United States of America and the Cook Islands, signed at Rarotonga June 11, 1980. The treaty establishes the maritime boundary between the United States off the coast of American Samoa and the Cook Islands, and it resolves the status of four islands in the Northern Cook Islands.

The establishment of a 200 nautical mile fishery conservation zone off the coasts of the United States, including American Samoa, pursuant to the Fishery Conservation and Management Act of 1976, and of a 200 nautical mile zone off the coasts of the Cook Islands, created the need for agreement on a maritime boundary in order to avoid enforcement problems and to provide for certainty in the development of resources in the area where such 200 nautical mile zones overlap.

In connection with establishing the maritime boundary it was necessary to address and resolve the issue of the sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga, and Penrhyn. The U.S. claims to these particular islands arises out of occasional 19th century visits to the islands by American whalers, and by execution of guano bonds under the Guano Islands Act of 1856. The U.S. claim has virtually no legal merit and is not supported by any other nation. The United States has never exercised governmental jurisdiction over these islands. They were first administered by Great Britain and then placed under the administration of New Zealand in 1901. The islands are inhabited. These islands and these people have historically been an integral part of the Cook Islands and are represented in the Cook Islands Government. Continued assertion of these claims is inconsistent with the U.S. interest of maintaining friendly relations with the peoples of the South Pacific.

Another matter which had to be addressed in connection with this treaty is the political status of the Cook Islands Government. The Cook Islands is in free association with New Zealand. It is internally self governing, and it may unilaterally declare its independence from New Zealand at any time. It exercises its foreign affairs competence in conjunction with New Zealand. It declared and does manage its 200 nautical mile zone. In this regard, it was necessary to address the question of whether it was legally possible for the United States to enter into a treaty relationship with a political entity other than a fully sovereign state.

After internal analysis, which included a review of the organic documents establishing the Cook Islands Government and of historical precedents, we concluded that the only limitation on the foreign affairs capacity of the Cook Islands Government existed in favor of New Zealand. We requested and received confirmation from the Government of New Zealand that the Cook Islands has the competence to enter into this treaty and that New Zealand has no objection to its so doing. The diplomatic note of the Government of New Zealand concerning this matter is attached. I recommend that it be transmitted to the Senate for its information.

Officials met in Rarotonga October 12–14, 1979 to begin negotiations. A representative of the Government of American Samoa participated as a member of the U.S. delegation to these talks. A draft agreement was negotiated at that time. Thereafter, the geographic coordinates of the maritime boundary were established through diplomatic channels. The treaty was signed on June 11, 1980 on the occasion of the first visit by a U.S. Ambassador to the Cook Islands.

The operative portion of the treaty consists of seven articles.

Article I sets out the specific geographic coordinates which define the maritime boundary. This boundary is approximately 566.4 nautical miles in length, and consists of 24 segments. At its closest point it is 119.6 nautical miles from the nearest American Samoa island. This is a negotiated maritime boundary developed on the basis of principles deemed by the parties to be equitable in view of the relevant geographic circumstances.

Article II sets out the geodetic and computational bases used for describing the boundary, including the particular charts from which calculations were made in establishing the boundary.

Article III describes the legal effect of the maritime boundary. It provides that the Cook Islands shall not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil on the United States side of the boundary and, that on the Cook Islands' side of the boundary, the United States will not claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV is a disclaimer provision which makes clear that agreement on the maritime boundary does not constitute recognition of the jurisdiction that the other party may claim to exercise in the delimited area beyond that otherwise recognized by each party to the treaty. In this connection the United States and the Cook Islands maintain different positions concerning the breadth of the territorial sea and the nature of jurisdiction that may be exercised within the 200 nautical mile zone. Article IV is intended to preserve the respective positions of each party.

Article V is an express statement that the United States by virtue of this treaty recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka (Danger), Manihiki and Rakahanga.

Article VI is a general cooperation provision. It is in the U.S. interest to develop a close, friendly and cooperative relationship with the Cook Islands by promoting direct government to government contacts and in particular by promoting contacts between American Samoa and the Cook Islands.

Article VI provides that the English language text is the official treaty text and that the treaty will enter into force on the date of the exchange of instruments of ratification.

In connection with the negotiation of the treaty, discussions took place relating to the fishery resources within the Cook Islands' 200 nautical mile zone. The attached letters set forth the positions and the understandings of the two sides. The United States sought and received assurances that U.S. flag fishing vessels and foreign vessels supplying the canneries in American Samoa will not be barred on a discriminatory basis from seeking licenses to fish in the Cook Islands' 200 mile zone. I recommend that this separate exchange of letters be transmitted to the Senate for its information.

I recommend that this treaty be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

Article VI provides that the English language text [illegible] treaty text and that the treaty will enter into force [illegible] exchange of instruments of ratification.

[illegible]

[illegible] to the Senate for its information.

[illegible]

[illegible]

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS ON FRIENDSHIP AND DELIMITATION OF THE MARITIME BOUNDARY BETWEEN THE UNITED STATES OF AMERICA AND THE COOK ISLANDS

The two governments,

Desiring to strengthen the existing bonds of friendship between their countries and in particular between the peoples of the Cook Islands and American Samoa,

Noting the Territorial Sea and Exclusive Economic Zone Act 1977 of the Cook Islands,

Noting the Fishery Conservation and Management Act of 1976 of the United States of America,

Desiring to establish a maritime boundary between the United States of America and the Cook Islands,

Noting that the United States of America has maintained a claim to sovereignty over the islands of Pukapuka (Danger), Manihiki, Rakahanga and Penrhyn,

Noting further that this claim has not been recognized by the Cook Islands,

Have agreed as follows:

ARTICLE I

The maritime boundary between the United States of America and the Cook Islands shall be determined by the geodetic lines connecting the following coordinates:

Latitude (South)	Longitude (West)
17°33′28″	166°38′35″
16°45′30″	166°01′39″
16°23′29″	165°45′11″
16°18′30″	165°41′29″
16°08′42″	165°34′12″
15°44′58″	165°16′36″
15°38′47″	165°12′03″
15°14′04″	165°18′29″
15°00′09″	165°22′07″
14°03′30″	165°37′20″
13°44′56″	165°58′44″
13°35′44″	166°09′19″
13°21′25″	166°25′42″
13°14′03″	166°34′03″
13°11′25″	166°37′02″
12°57′51″	166°52′21″
12°41′22″	167°11′01″
12°28′40″	167°25′20″
12°01′55″	168°10′24″
11°43′53″	168°27′58″
11°02′40″	168°29′21″
10°52′31″	168°29′42″
10°12′49″	168°31′02″
10°12′44″	168°31′02″
10°01′26″	168°31′25″

Article II

The geodetic and computational bases used are the World Geodetic System, 1972 (WGS 72) and the following charts and aerial plans:

Rose Island—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:80,000—local datum;

Manua Islands—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:80,000—corrected for WGS 72, 1980;

Swains Island—U.S. Chart Nos. 83484, 6th ed., March 26/77, 1:40,000—astro datum 1939;

Palmerston Atoll—Aerial Plan No. 1036/8h (N.Z. Lands & Survey), 1:50,400, 1976—local datum;

Suwarrow (Suvorov) Atoll—Aerial Plan No. 1036/8E (N.Z. Lands & Survey), 1:50,400, 1975—local datum;

Nassau Island—Aerial Plan No. 1036/8B (N.Z. Lands & Survey), 1:148,000, 1974—local datum;

Pukapuka (Danger) Island—Aerial Plan No. 1036/8D (N.Z. Lands & Survey), 1:28,800, 1975—local datum;

Niue—British Admiralty Chart BA 968, 16th ed., March 1979, 1:150,000, corrections to 1979—local datum;

Fakaofo Atoll—Aerial Plan No. 1036/7C (N.Z. Lands & Survey), 1:18,000, 1974—local datum.

Article III

On the side of the maritime boundary adjacent to the Cook Islands, the United States of America shall not, and on the side of the maritime boundary adjacent to American Samoa the Cook Islands shall not, claim or exercise for any purpose sovereign rights or jurisdiction over the waters or seabed and subsoil.

Article IV

The maritime boundary established by this Treaty shall not affect or prejudice in any manner any government's position with respect to the rules of international law concerned with the exercise of jurisdiction over the waters or seabed and subsoil or any other matter relating to the law of the sea.

Article V

The United States of America recognizes the sovereignty of the Cook Islands over the islands of Penrhyn, Pukapuka (Danger), Manihiki and Rakahanga.

Article VI

The Government of the United States of America and the Government of the Cook Islands, in the spirit of peace and friendship existing between the two governments and peoples, agree to cooperate with a view to promoting social and economic development in the Cook Islands, and to work toward the advancement of the South Pacific region as a whole. To these ends, they shall promote discussions between their peoples and appropriate government entities, in particular between the peoples of the Cook Islands and American Samoa.

ARTICLE VII

This Treaty shall be subject to ratification and shall enter into force on the date of the exchange of instruments of ratification.

DONE in duplicate, in the English and Maori languages, of which English shall be the authentic text, at Rarotonga this eleventh day of June, 1980.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:	FOR THE GOVERNMENT OF THE COOK ISLANDS:
Anne C. Martindell	Thomas Davis

EMBASSY OF NEW ZEALAND,
Washington, D.C., January 31, 1980.

The Embassy of New Zealand presents its compliments to the Department of State and has the honour to refer to its Note of 1 November 1979 in which inter alia it was requested that the Government of New Zealand indicate its position with respect to the Cook Islands Government's competence to undertake all rights specified in the recently negotiated Treaty of Friendship and Maritime Boundary Delimitation with the Cook Islands and New Zealand, within the context of the free association relationship between the Cook Islands and New Zealand.

As indicated by the New Zealand delegation during the negotiations the New Zealand Government confirms the competence of the Cook Islands Government to undertake the obligations and exercise the rights under the draft treaty. The New Zealand Government therefore has no objection to the conclusion of the proposed treaty directly between the Government of the United States and the Government of the Cook Islands. The Embassy also wishes to advise that the New Zealand Government would not propose to have any role in the ratification of the treaty other than perhaps as a channel through which the instruments of ratification might be conveyed.

The Embassy of New Zealand takes this opportunity to renew to the Department of State the assurances of its highest consideration.

ASSISTANT SECRETARY OF STATE,
OCEANS AND INTERNATIONAL ENVIRONMENTAL
AND SCIENTIFIC AFFAIRS,
Washington, D.C., June 11, 1980.

MR. JAMES GOSSELIN,
Secretary of External Affairs,
Departmment of External Affairs,
Rarotonga, Cook Islands.

DEAR SIR: This is in reference to your letter of today's date concerning discussions between representatives of our two governments which took place October 17–19, 1979, in Rarotonga concerning matters relating to the fishery resources within the 200-mile zone of the Cook Islands.

I understand the importance the Government of the Cook Islands attaches to the development of its fishery resources for the benefit of the people of the Cook Islands.

I appreciate the assurances contained in your letter. I also appreciate that the Cook Islands Government understands the concerns which we have expressed and that these concerns will be taken into account in the implementation of the policy set forth in your letter.

For our part, the Government of the United States of America fully intends to promote close cooperation between the Cook Islands authorities and United States flag vessel owners and operators. We will also be pleased to facilitate such cooperation between Cook Islands authorities and vessels supplying the canneries in American Samoa. We have transmitted a copy of your letter and this reply to the American Samoan authorities and would expect that they will take the same view.

Sincerely, **THOMAS R. PICKERING.**

GOVERNMENT OF THE COOK ISLANDS,
DEPARTMENT OF EXTERNAL AFFAIRS,
Rarotonga, Cook Islands, June 11, 1980.

MR. THOMAS R. PICKERING,
Assistant Secretary of State, Oceans and International Environmental and Scientific Affairs, Department of State, Washington, D.C.

DEAR SIR: I have the honour to refer to recent discussions between representatives of our two Governments which took place October 17–19, 1979, in Rarotonga concerning matters relating to the fisheries resources within the Cook Islands Exclusive Economic Zone, and to the information exchanged in the course of those talks.

I understand the importance attached by the people of American Samoa to seeing that third country vessels operating from American Samoa have continued access to the fisheries resources which they have fished in the past, including the fishery resources of the Cook Islands Exclusive Economic Zone. I also understand the desire on the part of the Government of the United States of America to ensure that its flag vessels which may desire to fish in the Cook Islands zone will be permitted to do so.

It is the policy of the Government of the Cook Islands to consider applications for fishery licenses in its Exclusive Economic Zone on a non-discriminatory basis without special regard for any particular country or its vessels. I can assure you that with respect to United States flag vessels or vessels supplying canneries in American Samoa, application for licenses to fish in the Cook Islands Exclusive Economic Zone will be treated in accordance with this policy.

The Government of the Cook Islands regards it as desirable to establish a cooperative relationship with United States flag vessels wishing to fish in the Cook Islands Zone and with the vessels supplying the canneries on American Samoa. We would therefore welcome discussions along these lines and would expect that the Government of the United States, as appropriate, would facilitate such cooperative relationships.

Yours sincerely,

JAMES GOSSELIN,
Secretary of External Affairs.

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96TH CONGRESS } SENATE { EXECUTIVE
2d Session } { Q

TAX CONVENTION WITH THE KINGDOM OF DENMARK

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME (THE CONVENTION), TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT WASHINGTON ON JUNE 17, 1980

SEPTEMBER 4, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
59–118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 4, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Washington on June 17, 1980. I also transmit the report of the Department of State with respect to the Convention.

The Convention will replace the existing convention between the United States and Denmark, which has been in effect since 1948. It is similar to the United States model income tax convention published in May 1977, which takes into account the modernization of tax laws and conventions, but it retains certain provisions of the existing convention. For example, interest from investment and royalties continues to be exempt from withholding of tax at source.

In the new Convention, Denmark agrees to extend to United States shareholders in Danish corporations a dividend tax credit similar to that available to Danish shareholders; Denmark regards this as a major concession, in that the United States does not grant an analogous reciprocal credit.

In addition, the Convention contains a provision, at the request of the United States, that allows either country to tax capital gains derived by residents of the other country from the sale of real property located in the first country.

An exchange of notes clarifies some technical points.

I recommend that the Senate give early and favorable consideration to the Convention and its advice and consent to ratification.

JIMMY CARTER.

LETTER OF TRANSMITTAL.

THE WHITE HOUSE, [illegible]

To the Senate of the United States:

[illegible]

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 25, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Washington on June 17, 1980.

The Convention will replace the existing convention between the United States and Denmark which has been in effect since 1948. It is similar to the United States model income tax convention published in May 1977, which takes into account the modernization of tax conventions during the last thirty years.

The Convention retains certain provisions of the existing convention. For example, interest and royalties are exempt from withholding of tax at source. Similarly, the ceiling rates of tax at source on dividends are retained: 15 percent on portfolio dividends and 5 percent on direct investment dividends.

In the new Convention, Denmark agrees to extend to United States shareholders in Danish corporations a dividend tax credit similar to that available to Danish shareholders; Denmark regards this as a major concession, in that the United States does not grant an analogous reciprocal credit.

The Convention provides for the avoidance of double taxation through foreign tax credits. In the case of United States citizens resident in Denmark, the United States agrees to avoid double taxation of their United States source income by treating a portion of such income as foreign source and allowing credit for the tax paid to Denmark on that income.

In addition, the Convention contains a provision, at the request of the United States, that allows either country to tax capital gains derived by residents of the other country from the sale of real property located in the first country.

The new Convention also contains compromise solutions in certain areas. For example, it allows Denmark to tax fees paid to United States directors of Danish corporations for services performed in Denmark, without a minimum threshold. (This provision, like others, is reciprocal.) The proposed Convention also provides, reciprocally, that entertainers may be taxed at source if their gross income for services performed in the source country exceeds $3,000, rather than the $15,000 sum specified in the United States model. However, Denmark allows deductions for expenses in computing the final tax liability. These provisions are compromises with the OECD model draft, which allows taxation at source for all directors' fees and all income of entertainers and athletes, with no threshold of time or amount. In another provision, Denmark agrees to allow deductions to qualified United States pension plans in certain cases to resolve a problem which had arisen for United States employees of some United States companies in Denmark.

The provisions with respect to the taxation of business income, earnings of employees and self-employed persons, exchange of information, administrative assistance, and nondiscrimination are similar to those in the United States model convention.

An exchange of notes clarifies some technical points and reiterates the agreement previously incuded in an exchange of notes with Norway concerning a United States affiliate of S.A.S. airlines. It also includes an understanding that Denmark may continue to apply its formulary determination of net income of insurance agencies.

The Convention will enter into force when both Governments have notified each other that their respective constitutional requirements have been met. Its provisions will have effect generally on or after January 1 following the date of entry into force of the Convention. Where the provisions of the 1948 Convention afforded greater tax relief than those of the new Convention, the former will continue in effect until one year after the date of entry into force of the new Convention.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted.

Warren Christopher.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the Kingdom of Denmark, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:

ARTICLE 1

Personal Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) by the laws of either Contracting State, or

(b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of this Convention except paragraph 4 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Fiscal Domicile)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect:

(a) the benefits conferred by a Contracting State under paragraphs 1(b), 4 and 5 of Article 19 (Pensions, Etc.), Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and

(b) with respect to individuals who are neither citizens of, nor have permanent residence in, a Contracting State, the benefits conferred by that State under Article 20 (Government Service), paragraph 1 of Article 21 (Students and Trainees), and Article 28 (Diplomatic Agents and Consular Officers).

ARTICLE 2

Taxes Covered

1. The taxes to which this Convention applies are:

(a) in the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax and the personal holding company tax); and the tax imposed on insurance premiums paid to foreign insurers (but only to the extent that the foreign insurer does not reinsure the risks in question with a person not entitled to relief from such tax under this or another Convention).

(b) in Denmark: national income taxes and municipal income taxes.

2. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "person" includes an individual, a company, an estate, a trust, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean, respectively, an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(d) the term "international traffic" means any transport by a ship or aircraft, except when such transport is solely between places in the other Contracting State;

(e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate; and

(ii) in Denmark: the Minister for Inland Revenue, Customs, and Excise or his authorized representative;

(f) the term "United States" means the United States of America and, where used in a geographical sense, includes any area outside the territorial sea of the United States which, in accordance with international law and the laws of the United States, has been or may hereafter be designated as an area within which the United States may exercise rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil; the term "United States" does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession;

(g) the term "Denmark" means the Kingdom of Denmark and, where used in a geographical sense, includes any area outside the territorial sea of Denmark which, in accordance with international law and the laws of Denmark, has been or may hereafter be designated as an area within which Denmark may exercise rights with respect to the exploration and exploitation of the natural resources of the seabed or its subsoil; the term "Denmark" does not include the Faroe Islands or Greenland;

(h) the terms "Contracting State" and "the other Contracting State" mean Denmark or the United States, as the context requires.

2. As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Fiscal Domicile

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of incorporation, or any other criterion of a similar nature, provided, however, that:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by an estate or trust, this term applies only to the extent that the income derived by such estate or trust is subject to tax as the income of a resident of that State, either in its hands or in the hands of its beneficiaries.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) the individual shall be deemed to be a resident of the State in which he has a permanent home available; if such individual has a permanent home available in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (center of vital interests);

(b) if the State in which the individual has his center of vital interests cannot be determined, or if he has no permanent home available in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. A company is a resident of a Contracting State if it is created or organized under the laws of that State or a political subdivision thereof.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop; and
(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e) of this paragraph, provided that the overall activity of the fixed place of business resulting from the combination is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income From Real Property

1. Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property, and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

ARTICLE 7

Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the othe Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable

allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of this Convention, "business profits" means income derived from any trade or business whether carried on by an individual, company, or any other person, or group of persons, including the rental of tangible personal (movable) property, and the rental or licensing of cinematograph films or films or tapes used for radio or television broadcasting.

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation in international traffic of ships or aircraft shall be taxable only in that State.

2. For the purposes of this Article, profits from the operation if international traffic of ships or aircraft include profits derived from the rental on a full or bareboat basis of ships or aircraft if operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including trailers, barges, and related equipment for the transport of containers) used for the transport in international traffic of goods or merchandise shall be taxable only in that State.

4. The provisions of paragraphs 1 and 3 shall also apply to profits from the participation in a consortium, pool, a joint business, or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons.

ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 percent of the share capital of the company paying the dividends;

(b) 15 percent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. As long as an individual resident in Denmark is entitled under Danish law to a tax credit (skattegodtgorelse) in respect of dividends paid by a company which is a resident of Denmark, paragraph 2 of this Article shall not apply to dividends beneficially owned by a resident of the United States. In these circumstances, the following rules shall apply:

(a) Subject to the provisions of subparagraph (b) of this paragraph, the beneficial owner of such dividends shall be entitled to a tax credit in respect thereof equal to the credit to which an individual resident in Denmark would have been entitled had he received such dividends, and to the payment of any excess of that tax credit over his liability to tax in Denmark; however, tax may also be charged in Denmark and according to the laws of Denmark on the aggregate of the amount of such dividends and the amount of that tax credit, at a rate not exceeding 15 percent.

(b) Where the beneficial owner of the dividends is a company which holds directly at least 25 percent of the share capital of the company paying the dividends, the beneficial owner of such dividends shall be entitled to a tax credit in respect thereof equal to one-third of the credit to which an individual resident in Denmark would have been entitled had he received such dividends, and to the payment of any excess of that tax credit over its liability to tax in Denmark; however, tax may also be charged in Denmark and according to the laws of Denmark on the aggregate of the amount of such dividends and the amount of that tax credit, at a rate not exceeding 5 percent.

(c) The aggregate of the amount of the dividends and the amount of the tax credits referred to in subparagraphs (a) and (b) of this paragraph (without reduction for the 15 or 5 percent tax, as the case may be, by Denmark) shall be treated as a dividend to the resident of the United States for United States tax credit purposes.

4. The term "dividends" as used in this Convention means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

5. The provisions of paragraphs 1, 2, and 3 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carriers on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

6. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State (and when that other State is the United States, to a citizen of the United States) or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, even if the dividends paid consist wholly or partly of profits or income arising in that other State. Notwithstanding the preceding sentence, the other State may impose a tax on the dividends paid by a company described in the preceding sentence if more than 50 percent of the share capital of the

company is owned, directly or indirectly, by individuals who are not residents of the first Contracting State and if such company was formed or availed of for the purpose of taking advantage of this paragraph.

ARTICLE 11

Interest

1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching such securities, bonds, or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Convention.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 12

Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, (but not including cinematographic films or films or tapes used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent estab-

lishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right, or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 (Income From Real Property) and situated in the other Contracting State may be taxed in that other State.

2. Gains derived by a resident of a Contracting State from the alienation of

(a) stock of a company whose assets consist principally of real property situated in the other Contracting State, or

(b) an interest in a trust, estate, or any other body of persons whose assets consist principally of real property situated in the other Contracting State

may be taxed in that other State. For the purposes of this paragraph, the term "real property" includes stock referred to in subparagraph a) or an interest referred to in subparagraph b).

3. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

4. Notwithstanding the provisions of paragraph 3, gains derived by an enterprise of a Contracting State from the alienation of ships or aircraft operated by such enterprise in international traffic, or movable property pertaining to the operation of such ships or aircraft, including containers, shall be taxable only in that State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent Personal Services

Subject to the provisions of Article 16 (Directors' Fees), income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities. If he has such a fixed base, such income may be taxed in that other State but only so much of it as is attributable to that fixed base.

ARTICLE 15

Dependent Personal Services

1. Subject to the provisions of Articles 16 (Directors' Fees), 19 (Pensions, Etc.), and 20 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of Denmark in respect of an employ- crew of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed in that Contracting State.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of Denmark in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium shall be taxable only in Denmark.

ARTICLE 16

Directors' Fees

Directors' fees and other similar payment derived by a resident of a Contracting State for services rendered in the other Contracting State as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Investment or Holding Companies

If 25 percent or more of the share capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest, or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest, or royalties.

ARTICLE 18

Artistes and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio, or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State if the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities exceeds three thousand United States dollars ($3,000) or its equivalent in Danish kroner for the taxable year concerned.

2. When income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete but is diverted to another person, that income may notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

ARTICLE 19

Pensions, et cetera

1. Subject to the provisions of paragraph 2 of Article 20 (Government Service),

   (a) pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State, and

   (b) social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation

to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State.

4. Periodic payments for the support of a child under 18 years of age made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be taxable only in the first-mentioned Contracting State. However, when such a payment is made by a citizen or resident of the United States to a resident of Denmark pursuant to a decree of a Danish court, Denmark may tax such payment and the United States shall allow a deduction therefor.

5. Contributions paid by, or on behalf of, an individual resident of a Contracting State, who is not a citizen of that State, to a pension plan that is recognized for tax purposes in the other Contracting State will be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognized for tax purposes in that first-mentioned State, provided that

(a) such individual was contributing to such pension plan before he became a resident of the first-mentioned State; and

(b) the competent authority of the first-mentioned State agrees that the pension plan corresponds to a pension plan recognized for tax purposes by that State.

ARTICLE 20

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a citizen of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a citizen of, that State.

3. The provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), 18 (Artistes and Athletes) and 19 (Pensions, Etc.) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

Students and Trainees

1. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his full-time education or training receives for the purpose of his maintenance, education, or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

2. Notwithstanding Article 4 (Fiscal Domicile), an individual to whom paragraph 1 applies and who immediately before visiting the United States was a resident of Denmark may elect to be treated for United States tax purposes and this Convention as a resident of the United States. The election shall apply to all periods during the taxable year of the election and subsequent taxable years during which the individual qualifies under paragraph 1 and may not be revoked except with the consent of the competent authority of the United States.

ARTICLE 22

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income From Real Property), if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 23

Relief From Double Taxation

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income the appropriate amount of tax paid to Denmark. Such appropriate amount shall be based upon the amount of tax paid to Denmark, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources without the United States)

provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Denmark, the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. For the purpose of applying paragraph 1 of this Article, income or profits which may be taxed in Denmark in accordance with this Convention (and which either may not be taxed in the United States or may be taxed in the United States solely by reason of citizenship) shall be deemed to arise from sources without the United States. In addition, if dividends paid by a company which is a resident of the United States are beneficially owned by a citizen of the United States who is a resident of Denmark, such dividends shall be deemed to arise from sources without the United States to the extent that such dividends may be taxed by the United States solely by reason of citizenship, but only if such individual certifies to the competent authority of the United States that he is resident in Denmark and elects to be subject to United States withholding tax on such dividends (under Article 10 (Dividends)) as if he were not a citizen of the United States. The withheld tax will be applied against the tax imposed by the United States in accordance with paragraph 3 of Article 1 (Personal Scope). This paragraph shall not apply to a former United States citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax.

3. In the case of Denmark, double taxation shall be avoided as follows:

(a) subject to the provisions of subparagraph (c), when a resident of Denmark derives income which, in accordance with the provisions of this Convention may be taxed in the United States (other than solely by reason of citizenship), Denmark shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax paid in the United States (other than solely by reason of citizenship).

(b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United States.

(c) When a resident of Denmark derives income which, in accordance with the provisions of this Convention, shall be taxable only in the United States, Denmark may include this income in the tax base but shall allow as a deduction from income tax that part of the income tax which is attributable to the income derived from the United States.

ARTICLE 24

Nondiscrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not residents of a Contracting State. How-

ever, for purposes of United States taxation of income, United States citizens not resident in the United States are not in the same circumstances as Danish citizens not resident in the United States.

2. The term "nationals" means:

(a) all individuals possessing the citizenship of a Contracting State;

(b) all legal persons deriving their status as such from the laws in force in a Contracting State.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs, and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 4 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5 Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are of may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 25

Mutual Agreement Procedure

1. When a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent

authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 26

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning the taxes to which this Convention applies insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Convention applies. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents

(including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

4. For the purpose of this Article, this Convention shall apply not only to the taxes to which the Convention otherwise applies but also to the national taxes of every kind and description of the Contracting States.

ARTICLE 27

Administrative Assistance

1. The Contracting States undertake to lend assistance and support to each other in the collection of the taxes to which this Convention applies, together with interest, costs, and additions to such taxes.

2. In the case of applications for enforcement of taxes, revenue claims of each of the Contracting States which have been finally determined may be accepted for enforcement by the other Contracting State and may be collected in that State in accordance with the laws applicable to the enforcement and collection of its own taxes.

3. Any application shall include a certification that under the laws of the State making the application the taxes have been finally determined.

4. The assistance provided for in this Article shall not be accorded with respect to the citizens, companies, or other entities of the State to which application is made, except as is necessary to insure that the exemption or reduced rate of tax granted under this Convention to such citizens, companies, or other entities shall not be enjoyed by persons not entitled to such benefits.

ARTICLE 28

Diplomatic Agents and Consular Officers

Nothing in this Convention shall affect the fiscal privileges diplomatic or consular oficers under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry Into Force

1. The Governments of the Contracting States shall notify each other through diplomatic channels when the constitutional requirements for the entry into force of this Convention have been satisfied.

2. This Convention shall enter into force upon receipt of the latter of the notifications referred to in paragraph 1, and the provisions of the Convention shall have effect:

(a) in respect of taxation of dividends at source, for dividends paid or credited on or after the first day of January next following the date on which the Convention enters into force;

(b) in respect of taxation of other income, for income derived by any person in any taxable year beginning on or after the first day of January next following the date on which the Convention enters into force.

3. Subject to paragraph 4, the Convention between Denmark and the United States for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Washington, D.C., on May 6, 1948 (hereinafter referred to as "the 1948 Convention") shall cease to have effect in respect of income to which this Convention applies in accordance with paragraph 2.

4. Where any provision of the 1948 Convention would have afforded any person greater relief from tax than this Convention, such provision shall continue to have effect for one year after the date on which the provisions of this Convention would otherwise first have effect pursuant to paragraph 2 of this Article, but shall cease to have effect thereafter.

5. The 1948 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force, by giving at least 6 months' prior notice of termination through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) in respect of taxation at source, for amounts paid or credited on or after the first day of January next following the date of termination specified in the notice of termination;

(b) in respect of taxation of other income, for income derived by any person in any taxable year beginning on or after the first day of January next following the date of termination specified in the notice of termination.

DONE at Washington, in duplicate, both in the English and Danish languages, the two texts having equal authenticity, this 17th day of June 1980.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

H. ALLEN HOLMES.

FOR THE GOVERNMENT OF THE KINGDOM OF DENMARK:

OTTO BORCH.

JUNE 17, 1980.

His Excellency OTTO R. BORCH,
Ambassador of Denmark.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which was signed today, and to confirm, on behalf of the Government of the United States of America, the following understandings reached between our two Governments.

(1) Scandinavian Airlines System (SAS) is a consortium within the meaning of Article 8 (Shipping and Air Transport), its participating members being Det Danske Luftfartsselskab A/S (DDL), Det Norske Luftfartsselskap A/S (DNL), and A.B. Aerotransport (ABA). In order to avoid the problems inherent in operating in the United States through a consortium, the members of the consortium in 1946 established a New York corporation, Scandinavian Airlines System, Inc. (SAS, Inc.) to act on their behalf in the United States pursuant to an agency agreement dated September 18, 1946. A similar agreement was entered into by SAS directly and SAS, Inc. on March 14, 1951.

Pursuant to the agency agreement, SAS, Inc. is authorized to perform only such functions as SAS assigns to it, all in connection with international air traffic. Under that agreement, all revenues collected by SAS, Inc. are automatically credited to SAS. Operating expenses incurred by SAS, Inc. are debited to SAS in accordance with the terms of the agency agreement. SAS is obligated under the terms of the agency agreement to reimburse SAS, Inc. for all of its expenses irrespective of the revenues of SAS, Inc. SAS, Inc. does not perform any functions except those connected with or incidental to the business of SAS as an operator of aircraft in international traffic.

In view of the special nature of the SAS consortium and in view of the agency agreement as described above, the United States for purposes of Article 8 (Shipping and Air Transport) of the Convention signed today shall treat all of the income earned by SAS, Inc. which is derived from the operation in international traffic of aircraft as the income of the SAS consortium.

(2) This Convention may be extended either in its entirety or with any necessary modifications to any territory or U.S. possession which is specifically excluded from coverage under this Convention by reasons of subparagraph (1) (f) and (1) (g) of Article 3 (General Definitions) and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date, and shall be subject to such modifications and conditions, as may be specified in a supplementary Convention agreed between the Contracting States, and shall enter into force in accordance with their constitutional procedures.

(3) It is understood that Articles 7 (Business Profits) and 24 (Non-Discrimination) shall not prevent Denmark from continuing to tax permanent establishments of United States insurance companies in accordance with section 12, paragraph 3, of the Danish Company Tax Law.

(4) Revenue claims or taxes which are "finally determined," as used in paragraphs 2 and 3 of Article 27 (Administrative Assistance), are finally determined when all rights of administrative appeal (except, in the case of Denmark, the right to revision by exceptional procedure) have lapsed or have been exhausted and the Contracting State applying for enforcement has the right under its internal law to enforce and collect the revenue claim or tax provided, however, if the revenue claim or tax is at any time before a judicial tribunal in the Contracting State applying for enforcement, the revenue claim or tax is finally determined when all rights of judicial appeal have lapsed or have been exhausted and the judicial decision has become final.

If this is in accordance with your understanding, I would appreciate an acknowledgment from you to that effect.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

/s/ H. Allen Holmes.

Royal Danish Embassy,
Washington, D.C., June 17, 1980.

Hon. Edmund S. Muskie,
Secretary of State of the United States of America,
Washington, D.C.

Mr. Secretary, I have the honor to acknowledge receipt of your note of June 17, 1980, which reads as follows:

"I have the honor to refer to the Convention between the Government of the United States of America and the Government of the Kingdom of Denmark for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, which was signed today, and to confirm on behalf of the Government of the United States of America, the following understandings reached between our two Governments.

(1) Scandinavian Airlines System (SAS) is a consortium within the meaning of Article 8 (Shipping and Air Transport), its participating members being Det Danske Luftfartsselskab A/S (DDL), Det Norske Luftfartsselskap A/S (DNL), and A.B. Aerotransport (ABA). In order to avoid the problems inherent in operating in the United States through a consortium, the members of the consortium in 1946 established a New York corporation, Scandinavian Airlines System, Inc. (SAS, Inc.) to act on their behalf in the United States pursuant to an agency agreement dated September 18, 1946. A similar agreement was entered into by SAS directly and SAS, Inc. on March 14, 1951.

Pursuant to the agency agreement, SAS, Inc. is authorized to perform only such functions as SAS assigns to it, all in connection with international air traffic. Under that agreement, all revenues collected by SAS, Inc. are automatically credited to SAS. Operating expenses incurred by SAS, Inc. are debited to SAS in accordance with the terms of the agency agreement. SAS is obligated under the terms of the agency agreement to reimburse SAS, Inc. for all of its expenses irrespective of the revenues of SAS, Inc. SAS, Inc. does not perform any functions except those connected with or incidental to the business of SAS as an operator of aircraft in international traffic.

In view of the special nature of the SAS consortium and in view of the agency agreement as described above, the United States for purposes of Article 8 (Shipping and Air Transport) of the Convention signed today shall treat all of the income earned by SAS, Inc. which is derived from the operation in international traffic of aircraft as the income of the SAS consortium.

(2) This Convention may be extended either in its entirety or with any necessary modifications to any territory or U.S. possession which is specifically excluded from coverage under this Convention by reasons of subparagraph (1) f) and (1) g) of Article 3 (General

Definitions) and which imposes taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date, and shall be subject to such modifications and conditions, as may be specified in a suppementary Convention agreed between the Contracting States, and shall enter into force in accordance with their constitutional procedures.

(3) It is understood that Article 7 (Business Profits) and 24 (Non-Discrimination) shall not prevent Denmark from continuing to tax permanent establishments of United States insurance companies in accordance with section 12, paragraph 3, of the Danish Company Tax Law.

(4) Revenue claims or taxes which are "finally determined", as used in paragraphs 2 and 3 of Article 27 (Administrative Assistance), are finally determined when all rights of administrative appeal (except, in the case of Denmark, the right to revision by exceptional procedure) have lapsed or have been exhausted and the Contracting State applying for enforcement has the right under its internal law to enforce and collect the revenue claim or tax; provided, however, if the revenue claim or tax is at any time before a judicial tribunal in the Contracting State applying for enforcement, the revenue claim or tax is finally determined when all rights of judicial appeal have lapsed or have been exhausted and the judicial decision has become final."

I confirm these understandings on behalf of the Government of the Kingdom of Denmark. These understandings constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Convention between the Government of the Kingdom of Denmark and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income which was signed today.

Accept, Mr. Secretary, the renewed assurances of my highest consideration.

OTTO BORCH,
Ambassador.

96TH CONGRESS *2d Session*	SENATE	EXECUTIVE R

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, ADOPTED BY THE UNITED NATIONS GENERAL ASSEMBLY ON DECEMBER, 18, 1979, AND SIGNED ON BEHALF OF THE UNITED STATES OF AMERICA ON JULY 17, 1980

NOVEMBER 12, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
79-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 1980.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification (subject to certain qualifications and possibly to appropriate implementing legislation), I transmit herewith a copy of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention was adopted by the United Nations General Assembly on December 18, 1979 and signed on behalf of the United States of America on July 17, 1980. The report of the Department of State with respect to the Convention is also transmitted for the information of the Senate.

Adoption of this Convention by the General Assembly at the conclusion of its 34th Session in December, 1979, was the culmination of a negotiating process that lasted several years. Throughout this process, the United States was an active participant and a vigorous supporter of a comprehensive and effective international instrument to achieve the elimination of discrimination against women. Although certain earlier human rights treaties relate to the rights of women, none of these previous instruments attempted to deal with women's rights in as comprehensive a manner as this Convention. The wide scope of the Convention is particularly noteworthy and commendable in that it calls upon States Parties to take "all appropriate measures" to eliminate discrimination against women in such diverse fields of human endeavor as politics, law, employment, education, health care, commercial transactions, and domestic relations. Moreover, the Convention establishes a Committee on the Elimination of Discrimination against Women to review periodically the progress being made by States Parties.

Ratification of the Convention on the Political Rights of Women in 1976 was a recent express affirmation by the Executive and Legislative branches of the U.S. Government that human rights in general and women's rights in particular are matters of legitimate concern to the international community and are not subjects with exclusively domestic ramifications. U.S. ratification of the Convention at hand, the newest of the international human rights instruments, would be consistent with this affirmation and would make clear at home and abroad the commitment of the United States to eliminate discrimination against women.

The great majority of the substantive provisions of the Convention are consistent with the letter and spirit of the United States Constitution and existing laws. However, certain provisions of the Convention raise questions of conformity to current United States law. Nevertheless, the Departments of State and Justice and other interested agencies of the Federal Government concur in the judgment that, with the adoption of certain qualifications and, possibly, appropriate implementing legislation, there are no constitutional or other legal obstacles to United States ratification. The report of the Department of State on the Convention and an attached legal memorandum describe the provisions of the Convention and identify those areas of concern that will require further discussion and treatment.

This Convention is a significant new element in the development of the international law of human rights. By giving its advice and consent to ratification of the Convention, the Senate will confirm our country's traditional commitment to the promotion and protection of human rights and will enhance our nation's ability to achieve progress throughout the world. I hope that all States will become Parties to the Convention and that it will be applied universally. I recommend that the Senate give early and favorable consideration to this Convention.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 23, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification (subject to certain qualifications and possibly to appropriate implementing legislation), the Convention on the Elimination of All Forms of Discrimination against Women. The Convention was adopted by the United Nations General Assembly on December 18, 1979 and signed on behalf of the United States of America on July 17, 1980.

Adoption of this Convention by the General Assembly at the conclusion of its 34th Session in December, 1979, was the culmination of a negotiating process that lasted several years. Throughout this process, the United States was an active participant and a vigorous supporter of a comprehensive and effective international instrument to achieve the elimination of discrimination against women.

In the United States, the role of women in all facets of life has changed dramatically during the past few decades due to a wide variety of sweeping legislative, economic, social, and cultural developments. However, domestic and international awareness of the need to proclaim and promote women's rights is a more recent phenomenon. Such activities as the International Women's Year and the U.N. Decade for Women are clear indications of this global awareness and concern, but this Convention is one of the most significant manifestations to date of the growing international interest in the subject.

In the resolution that accompanied adoption of the Convention, the U.N. General Assembly declared, *inter alia*, that "discrimination against women is incompatible with human dignity and the welfare of society" and that "it is necessary to ensure the universal recognition in law and in fact of the principle of equality of men and women." You espoused the same principles in your message to the U.N. Mid-Decade Conference for Women.

Women's rights and the equality of men and women are addressed in very general terms in the U.N. Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the American Convention on Human Rights. The United States has signed the Covenants and the American Convention, all of which have been transmitted to the Senate for its advice and consent to ratification.

The Convention is far broader in scope and much more detailed than any of the international agreements that seek the advancement of women in particular areas.[1] Of these agreements, the United States has ratified only the 1904 Agreement for the Suppression of the White Slave Traffic, the 1933 Convention on the Nationality of Women, the 1948 Inter-American Convention on the Granting of Political Rights to Women, and the 1953 Convention on the Political Rights of Women. The United States ratified these agreements in, respectively, 1908, 1934, and 1976 (in the case of both political rights conventions).

There follows a summary of the Convention's provisions. The attached memorandum of law, to which your attention is invited, sets forth an analysis of both conformity of United States law with the Convention and of those provisions that might require either implementing legislation or reservations, understandings, and declarations.[2]

The Convention provides a broad definition of the term "discrimination against women" in Article 1 that applies to any distinction made on the basis of sex impairing human rights "in the political, economic, social, cultural, civil or any other field." In the next fifteen articles, the Convention obligates States Parties to take, in most instances, "all appropriate measures" to eliminate such discrimination in all its forms and in every field of human endeavor, including politics, law, employment, education, health care, commercial transactions, and domestic relations.

Article 2 obligates States Parties to embody the principle of equality of men and women in their national constitutions or other appropriate legislation, to adopt legislation and other measures prohibiting discrimination against women, to establish legal protections for women, and to ensure that no public authorities or institutions engage in any act or practice of discrimination against women.

Under Article 2, States Parties are also required to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise, to modify or abolish existing laws, regulations, customs and practices constituting discrimination against women, and to repeal all national penal provisions that discriminate against women. In like manner, Article 3 requires States Parties to take all appropriate measures in "all fields" to ensure the development and advancement of women.

Article 4(1) permits temporary special measures to accelerate equality of men and women but prohibits the maintenance of unequal or separate standards. Article 4(2) permits special measures aimed at protecting maternity and declares that they shall not be considered discriminatory.

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[1] Previous conventions have dealt with relatively narrow topics and include the Convention on the Political Rights of Women (1953), the Inter-American Convention on the Granting of Political Rights to Women (1948), the Convention on the Nationality of Married Women (1957), the Convention on the Nationality of Women (1933), the International Agreement for the Suppression of the White Slave Traffic (1904), the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1950), the UNESCO Convention Against Discrimination in Education (1960), and the Convention on Consent to Marriage (1962). In addition, the International Labor Organization has produced conventions on employment discrimination, equal remuneration for men and women workers for work of equal value, employment of women at night, employment of women before and after childbirth, insurance for widows and orphans, and employment of women underground.

[2] The Convention is the product of a consensus among more than 130 States and, as must be expected, contains certain language that can give rise to policy, as distinct from legal, questions. The attached memorandum of law discusses the latter concerns. With respect to policy, the tenth and eleventh preambular paragraphs are objectionable to many nations, including the United States, because they contain political rhetoric which those nations consider inappropriate for an international convention intended to impose binding legal obligations upon States Parties. For that reason, the United States, together with twenty-five other countries, did not support adoption of these preambular paragraphs during the General Assembly proceedings in December, 1979.

Article 5(a) obligates States Parties to take all appropriate measures to modify social and cultural patterns of conduct among their citizens for the purpose of eliminating sexual prejudices and stereotypes. Article 5(b) calls for "family education" to include "a proper understanding of maternity as a social function" and a recognition of the common responsibility of men and women for raising children.

Article 6 requires adoption of legislative or other measures to suppress all forms of traffic in women and exploitation of prostitution of women.

Pursuant to Article 7, Parties to the Convention must take all appropriate measures to eliminate discrimination against women in political activities and to ensure to women, on equal terms with men, the rights to vote, to run for and hold public office, and to participate in formulating and implementing government policy.

Article 8 calls for equality of men and women with respect to the opportunity to represent their governments in international activities, and Article 9 requires such equality with regard to their nationality and that of their children.

Article 10 obligates States Parties to take all appropriate measures to ensure equal rights with men regarding access to all types and levels of education, equal curricula and facilities, scholarships, programs for school drop-outs, and opportunities for athletic participation. Article 10 also includes an affirmative commitment to co-education.

In the field of employment, Article 11 obligates States Parties to ensure, on the basis of equality of men and women, the rights to work, to the same employment opportunities, to equal remuneration for work of comparable value, to social security, retirement, unemployment and disability benefits, to safe working conditions, to free choice of employment, and to promotion, job security and training. Article 11(2) requires that measures be taken to prevent discrimination against women in employment on the basis of marital status or maternity.

In accordance with Article 12(1), States Parties must eliminate discrimination against women in the delivery of health care services. Article 12(2) requires States Parties to provide "appropriate" and, where necessary, free services in connection with pregnancy, confinement, and the post-natal period, including adequate nutrition during pregnancy and lactation.

Article 13 mandates all appropriate measures to ensure equal rights to family benefits, financial credit, and participation in all aspects of cultural life and recreational activities. Article 14 sets forth a variety of rights and special programs for women living in rural areas.

Pursuant to Article 15, States Parties must accord women equality with men before the law, a legal capacity identical to men in civil matters, equal rights to conclude contracts and administer property, and equal procedural rights before all courts and tribunals.

Article 16 covers the field of domestic relations and requires States Parties to take all appropriate measures to ensure equality of men and women in all matters relating to marriage and its dissolution, parenthood and other legal relationships with children, and property ownership, administration, and disposition.

Article 24 obligates States Parties to initiate all necessary measures at the national level directed toward the "full realization of the rights" set out in the Convention.

Articles 17 through 22 constitute the administrative and enforcement provisions of the Convention. A Committee on the Elimination of Discrimination against Women is established, along with a requirement that States Parties submit reports to the United Nations Secretary-General, for consideration by the Committee, describing the measures they have adopted that give effect to the provisions of the Convention. The Committee may make recommendations based on the reports and information received from States Parties.

Articles 23 through 30 are the final clauses. Article 29 provides that any dispute with respect to the interpretation or application of the Convention that is not settled by negotiation shall, at the request of any party to the dispute, be submitted to arbitration. If, within six months of the date arbitration is requested, the parties are unable to agree on the organization of the arbitration, any party to the dispute may refer the matter to the International Court of Justice.

As is often the case with broad-based multilateral treaties, questions have been raised as to how the Convention will mesh with our domestic legal system. If the law of the United States does not meet the standards of the Convention, we risk being cited for failure to meet our international obligations. In such a case we have two options. We can change our law by enacting appropriate conforming legislation or we can submit a reservation to the treaty. As examples, we point out the following general problems:

> The broad definition of "discrimination against women" applies throughout the Convention and has the effect of applying the Convention to private organizations and areas of personal conduct not covered by U.S. law. The principal articles where this issues arises are Articles 2, 3, 5, 7, 10, and 12.
>
> Among other provisions that raise issues of conformity with current U.S. law are Article 2 (military registration and service related inequities, public accommodations), Article 11 (equal pay for work of comparable value, inequities in social security and workers' compensation benefits) and Article 12 (delivery of health care services).
>
> The Convention includes no provision that would take into account the division of authority between the state and Federal governments in the United States. Indeed, Article 24 obligates parties to adopt all necessary measures "at the national level" to realize the rights recognized in the Convention. We therefore recommend a reservation that would deal with the provisions imposing obligations whose fulfillment is dependent upon the state and local governments as well as the Federal Government. These provisions include Articles 6 (exploitation of prostitution), 10 (education), 13 (right to family benefits), 15 (contract and property rights), and 16 (domestic relations).

A further issue raised by the Convention is whether it is itself effective as domestic law. Virtually all of the articles of the Convention are, in our judgment, not self-executing and would probably not be construed as such since they appear to contemplate that legislative or other implementing action be taken by the parties (beyond ratification) in order to carry out the Convention's provisions. So that there will be no misunderstanding on this point, however, we propose a declaration that the substantive provisions of the treaties are not self-executing. Our obligation under international law to comply with the treaty will of course not be affected, and compliance will be subject to review through the procedures created by the Convention.

Specific language for implementing legislation or reservations is not being recommended at this time. When the Senate Committee on Foreign Relations wishes to take action regarding the Convention, interested agencies will meet upon request with the Committee and its staff to discuss the necessary language. If this approach is followed there will be no constitutional or other legal obstacles to ratification of the Convention by the United States. The Departments of Justice, Health and Human Services, Education, and Labor, the Equal Employment Opportunity Commission, and the United States Commission on Civil Rights concur with this assessment and are enthusiastic in their support of the Convention.

The Convention on the Elimination of All Forms of Discrimination against Women is a significant accomplishment of the United Nations system and an important advance in the development of the international law of human rights. United States adherence to this Convention is in the national interest and in the interest of the world community. It is our hope that the United States, after full consideration by the Senate, will become a party to the Convention.

Respectfully submitted,

EDMUND S. MUSKIE.

that legislative or other implementing action be taken by the parties (beyond ratification) in order to carry out the Convention's provisions. So that there will be no misunderstanding on this point, however, we propose a declaration that the substantive provisions of the treaties are not self-executing. The obligation under international law to comply with the treaty will of course not be affected, and compliance will be achieved, as necessary, through the procedures created by the Convention.

Specific language for implementing reservations or declarations is not being recommended at this time. When the Senate Committee on Foreign Relations decides to take action regarding this Convention, interested agencies will work with the Committee and its staff to develop the necessary language. If the proposals are followed, there will be no constitutional or other legal obstacles to ratification of the Convention by the United States. The Departments of Justice, Health and Human Services, Education, and Labor, the Equal Employment Opportunity Commission, and the United States Commission on Civil Rights concur with this assessment and are unanimous in their support of the Convention.

The Convention on the Elimination of All Forms of Discrimination against Women is consistent with the fundamental values of the United States and an important addition to the development of the international law of human rights. United States adherence to the Convention is in the national interest and in the interest of the world community. It is our hope that the United States, after full consideration by the Senate, will become a party to the Convention.

Respectfully submitted,

EDMUND S. MUSKIE.

MEMORANDUM OF LAW

U.S. LAW AND THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The following is an analysis of U.S. law that conforms to the Convention on the Elimination of all Forms of Discrimination against Women, as well as a statement of those areas of concern in which the Convention is either not addressed by or is in possible conflict with U.S. law.

ARTICLE 1—DEFINITION

Potential areas of concern

The definition of "discrimination against women" in Article 1 appears applicable not only in instances where federal or state action is involved but to private organizations and even interpersonal relationships. The effect of this definition, which further states that "the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status . . ." of their rights and freedoms, is to reach into areas that are not regulated by the federal government either due to Constitutional restraint or as a matter of public policy.

An appropriate reservation that would state the limits of federal jurisdiction would address the concern raised by this Article and applicable throughout the Convention.

ARTICLE 2—OBLIGATION TO ELIMINATE DISCRIMINATION

Federal initiatives

Section (a) of Article 2 imposes an obligation on parties to the Convention to procure equality of the sexes under their national constitutions and/or through legislation. The Congress of the United States has passed the proposed 27th Amendment to the U.S. Constitution (ERA): "Sec. 1 Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex." To date, 35 of the required 38 states have ratified this proposed amendment and Congress has granted an extension of the period of time in which the ERA may be ratified by the states to June, 1982. Although the Equal Rights Amendment has not yet been ratified, the President and the Congress have acted affirmatively and to the fullest extent of their authority to effectuate its passage.

Regardless of whether the ERA is ratified, the 14th and 5th Amendments to the Constitution provide a basis to invalidate any federal or state classification or distinction based on sex if it is not substantially related to an important government objective. *Craig* v. *Boren*, 429 U.S. 190 (1976).

Article 2(a), as an alternative to Constitutional coverage, imposes an affirmative obligation on Congress to initiate appropriate legislation to ensure the equal protection of women under the law. Congress has passed many significant pieces of legislation prohibiting discrimination on the basis of sex in housing, extension of credit, employment, education and in certain federally assisted programs. Following is an enumeration of those statutes that broadly or by specific program prohibit discrimination on the basis of sex.

Statute	Common name	Proper name
12 U.S.C. § 1735f–5		National Housing Act, as amended.
15 U.S.C. § 775		Federal Energy Administration Act of 1974.
15 U.S.C. § 719o		Alaska Natural Gas Transportation Act of 1976.
15 U.S.C. § 1691 et seq.	ECOA	Equal Credit Opportunity Act.
18 U.S.C. § 246		An act to amend Title 18, United States Code . . . [. . . to prohibit deprivation of employment or other benefit on account "of inter alia, race, sex."]
20 U.S.C. § 1145b		Title XII, Higher Education Act of 1965, as amended.
20 U.S.C. § 1681 et seq.	Title IX	Title IX of the Education Amendments of 1972.
20 U.S.C. § 1701 et seq.		Equal Educational Opportunities Act of 1974.
23 U.S.C. § 324		Federal-Aid to Highway Act of 1973.
29 U.S.C. § 206(d)	Equal pay	Equal Pay Act.
29 U.S.C. § 834(a)	CETA	Comprehensive Employment and Training Act Amendments of 1978.
31 U.S.C. § 1242(a)(1)	Revenue sharing	State and Local Fiscal Assistance Amendments of 1976.
33 U.S.C. § 1251 Note		Federal Water Pollution Control Act.
40 U.S.C. § 476		Federal Property and Administrative Services Act, as amended.
40 U.S.C. App. 223 Note		Appalachian Regional Development Act Amendments of 1971.
42 U.S.C. § 292d		Title VII, Public Health Service Act, as amended.
42 U.S.C. § 298b–2		Title VIII, Public Health Service Act, as amended.
42 U.S.C. § 2000e	Title VII	Title VII of the Civil Rights Act of 1964.
42 U.S.C. § 2971c		Economic Opportunity Amendments of 1972.
42 U.S.C. § 2930c		Headstart-Follow Through Act.
42 U.S.C. § 2985g	Community economic development.	Title VII, Economic Opportunity Act of 1964, as amended.
42 U.S.C. § 3601 et seq.	Housing	Title VIII of the Fair Housing Act.
42 U.S.C. § 3123		Public Works and Economic Development Act Amendments of 1971.
42 U.S.C. § 3789d(c)(c)(1)	LEAA	Omnibus Crime Control and Safe Streets Act of 1968, as amended.
42 U.S.C. § 5057	ACTION	Domestic Volunteer Service Act of 1973.
42 U.S.C. § 5151(a)		Disaster Relief Act of 1974.
42 U.S.C. § 5309(a)		Housing and Community Development Act of 1974.
42 U.S.C. § 5672		Juvenile Justice and Delinquency Prevention Act of 1974 (incorporating 42 U.S.C. § 3789d(c)).
42 U.S.C. § 5891		Energy Reorganization Act of 1974.
42 U.S.C. § 6727		Title II, Public Works Employment Act of 1976, as amended.
42 U.S.C. § 6870		Energy Conservation in Existing Buildings Act of 1976.
42 U.S.C. § 1651 Note		Trans-Alaska Pipeline Authorization Act.
43 U.S.C. § 1863		Outer Continental Shelf Lands Act Amendments of 1976.
45 U.S.C. § 803	The 4–R's Act	Railroad Revitalization and Regulatory Reform Act of 1976.
45 U.S.C. § 1708		Conveyance of submerged lands to territories [An Act "to place certain submerged lands in the jurisdiction of the governments of Guam, the Virgin Islands, and American Samoa, and for other purposes."]
49 U.S.C. § 1615(a)(1)	UMTA	Surface Transportation Assistance Act of 1976.
49 U.S.C. § 1730		Airport and Airway Development Act Amendments of 1976.

Section (a) also suggests that "other appropriate means" be utilized by Congress to procure equality under the law for men and women. Accordingly, the President created and the Congress funded the Task Force on Sex Discrimination coordinated through the Attorney General, to conduct a comprehensive review of all federal laws, regulations, policies and programs for the purpose of identifying discrimination on

best copy available

the basis of sex and to effectuate appropriate modifications to eliminate discrimination identified. The Task Force is responsible for numerous changes in federal policy and law.

Congress also separately mandated that a comprehensive review of the Social Security System be conducted jointly by the then Department of Health, Education and Welfare and the Task Force on Sex Discrimination to determine provisions that discriminated on the basis of sex or resulted in a disparate impact on the basis of sex. *See* Article 11, *infra*.

Section (e) raises several issues pertaining to nondiscrimination on the basis of sex by private organizations and establishments. The President under Executive Order 11246 and Executive Order 11375 has subjected federal contractors to nondiscrimination requirements including prohibitions against sex discrimination and specifically required affirmative action efforts. The Department of Labor has proposed a regulation that would prohibit federal contractors from paying membership fees or other expenses for its employees to join or participate in private organizations that exclude persons on the basis of, *inter alia*, sex, 45 Fed. Reg. 4954 (January 22, 1980). Also, a similar prohibition by the Federal Reserve System became effective October 11, 1979, 44 Fed. Reg. 60406 (October 19, 1979).

The President has directed that the prohibition involving official federal employee attendance at or participation in an organization that discriminates on the basis of race, be amended to cover organizations that discriminate on the basis of sex. (Chapter 410, Subchapter 8, paragraph 4, of the Federal Personnel Manual.)

The Congress has reached private organizations through legislation prohibiting discrimination in employment, housing, credit and education and a multiplicity of other programs enacted with specific nondiscrimination language.

Potential areas of concern

Sections (b), (c), (d), and (f) may raise areas of concern with existing federal statutes. In two instances the President of the United States has proposed corrective legislation but Congress, to date, has not acted affirmatively. First, the statutory preference granted veterans employed in the federal civil service and second, the male only registration for military service, both of which work in practice to discriminate on the basis of sex, have yet to be modified. The law also establishes limitations on women's participation and mobility in the Armed Forces particularly in combat-related assignments. (The U.S. Army bars women from combat related assignments as a matter of policy.)

Section (e) raises concern in the area of public accommodations. Congress has not amended existing statutes prohibiting discrimination to include a prohibition on the basis of sex. 42 U.S.C. 2000a. However, the Task Force on Sex Discrimination has recommended and drafted an amendment to the Civil Rights Act of 1964 to include such a prohibition on the basis of sex.

Membership in private clubs or organizations that are not supported in any way by federal financial assistance is, as mentioned earlier, not subject to government regulation.

Appropriate corrective legislation or reservations may be necessary in these areas.

ARTICLE 3—ADVANCEMENT OF WOMEN

There do not appear to be any unique concerns presented by Article 3 that would require additional reservations, declarations or understandings not already set out under other articles.

ARTICLE 4—TEMPORARY SPECIAL MEASURES

There do not appear to be any significant concerns raised by Article 4 that would require additional reservations, declarations or understandings, and there have already been several federal initiatives in this area.

Federal initiatives

The United States Supreme Court in *United Steelworkers* v. *Weber*, 443 U.S. 193 (1979), upheld voluntary affirmative action plans by private employers, the position consistently held by the Equal Employment Opportunity Commission (EEOC). Also Congress amended Title VII of the 1964 Civil Rights Act in 1978 to prohibit discrimination in employment on the basis of pregnancy or related disabilities, 42 U.S.C. 2000e(k).

Recently, the President has taken special initiatives to encourage and assist women business entrepreneurs by directing each federal agency to allocate specific resources for this purpose. Executive Order 12138. Additionally, the United States Supreme Court has upheld the Congressionally-mandated minority business set-aside program. *Fullilove* v. *Klutznick*, ______ U.S. ______ No. 78-1007, July 2, 1980.

ARTICLE 5—PATTERNS OF CONDUCT

Federal initiatives

Because education, as well as legislation, is one means to influence attitudes, Congress passed the Women's Educational Equity Act (WEEA) and recently substantially increased appropriations under the Act. 20 U.S.C. 1666 *et seq.*, as amended by 20 U.S.C. 3341 *et seq.* WEEA was expanded to authorize grants to local educational agencies and higher education institutions to develop non-sexist programs and projects to ensure sex equity and to implement the provisions of Title IX.

The Office of Education, the National Institute of Education and the National Center for Education Statistics have undertaken studies that examine the nature and extent of sex bias, sex discrimination and sex role development in order to design and evaluate accurately sex equity education programs.

Areas of potential concern

The United States federal government does not regulate family education or interpersonal relationships. *See* Article 1, *supra*. Therefore a statement of understanding may be appropriate.

ARTICLE 6—EXPLOITATION OF PROSTITUTION

Federal initiatives

Congress has enacted the "White Slave Act", prohibiting any person from transporting or assisting to transport a female across state lines for the purpose of prostitution. It applies only where interstate commerce is involved. 18 U.S.C. 2421 *et seq.*

Potential areas of concern

We do not understand Article 6 to prohibit prostitution per se. There is no federal statute prohibiting prostitution generally; it is a matter left to state regulation.[3] Should Article 6 be deemed to require this prohibition, a federal/state reservation clause would accommodate this concern.

ARTICLE 7—POLITICAL RIGHTS

Federal initiatives

In general, the internal affairs of political parties in the United States are not controlled or regulated by the federal government. However, the electoral process, including state primaries, has been held to constitutional requirements. In addition, the President appoints persons to "political" positions that are separate from the federal Civil Service. The appointment rate for women in top positions by the current administration has exceeded appointments by any other President. As of March 19, 1980, 33 percent of all appointments and those appointments pending before Congress for Boards and Commissions were women (343 women of 1,049 appointments).

Potential areas of concern

A statement of understanding may be appropriate to clarify the limited role of the federal government in non-governmental organizations and associations, including political parties, and their affairs. *See* Article 1, *supra*.

ARTICLE 8—REPRESENTATION IN INTERNATIONAL ACTIVITIES

Article 8 appears to raise no concerns that would require additional reservations, declarations or understandings.

ARTICLE 9—NATIONALITY

Our federal statutes are consistent with the mandate of Article 9.

ARTICLE 10—EDUCATION

Federal initiatives

Congress has acted in ending discrimination in education. Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally assisted education programs or activities. 20 U.S.C. 1681 *et seq.* Title II of the Education Amendments of 1976 added a number of provisions focusing on sex equity to the Vocational Education Act, including the development of programs to eliminate sexual sterotyping in vocational education and career steering. 20 U.S.C. 2301 *et seq.* In 1979 HEW issued a final Policy Interpretation on Intercollegiate Athletics and Title IX that provides guidance to be used in determining whether men and women are provided equal opportunity, treatment, and benefits in all aspects of an athletic program, including athletic scholarships.

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[3] The "federal/state" concern is discussed in the Report to the President. It is our expectation that one "federal/state" reservation clause would appropriately pertain to the entire Convention.

HEW also issued in 1979 "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex and Handicap," which explain the civil rights responsibilities of agencies administering federally funded vocational education programs and require, *inter alia*, states to submit methods of administration for the sexual integration of students where class enrollment exceeds eighty percent or more of one sex. 44 Fed. Reg. 17162 (March 21, 1979).

Potential areas of concern

Title IX and other mentioned statutes have contributed significantly to equal educational opportunity. Although these statutes apply only to public and private institutions that receive federal assistance, *see* Article 1, *supra*, this includes most educational institutions in the United States.

Additionally, 1) the actual administration of public elementary and secondary schools is a responsibility of the states, 2) there is no federal law that requires co-education, and 3) there is no federal statute that specifically requires revision of textbooks for sexual stereotyping. Textbook revision is generally a matter regulated by state review commissions. The federal/state reservation clause, a general reservation clause, or implementing legislation would accommodate these concerns.

ARTICLE 11—EMPLOYMENT

Federal initiatives

All conditions of employment, including promotions and hiring, are covered by Title VII of the 1964 Civil Rights Act, which prohibits discrimination on the basis of sex, including pregnancy and related disabilities.

Pursuant to that Act, the EEOC issued Uniform Guidelines for Employee Selection that establish uniform criteria for selection of employees in the private and public sector. 29 C.F.R. 1607 *et seq.*

The 1963 Equal Pay Act requires equal pay for men and women who perform jobs of equal skill, responsibility and effort under similar working conditions.

Also, the 1976 Vocational Education Amendments described earlier are relevant to this Article.

The Department of Labor has recently issued guidelines entitled "Regulations on Nondiscrimination in Apprenticeship Programs" that establish policies and procedures to promote equality of opportunity in apprenticeship programs registered with DOL or recognized state agencies. The regulations also prohibit discrimination based on sex and other grounds. 29 C.F.R. 30 *et. seq.* The EEOC has issued final guidelines regarding pregnancy (29 C.F.R. 1604.10 *et seq.*) and proposed guidelines on Employment Discrimination and Reproductive Hazards, 45 Fed. Req. 7514 (February 1, 1980).

Potential areas of concern

Despite the fact that Title VII is extremely comprehensive, it includes and implies certain exemptions. For example, employees of employers hiring fewer than fifteen, certain legislative branch employees, and political appointees of state and local governments enjoy no Title VII protection from sex discrimination in employment. Initiatives to remedy some of these situations statutorily have to date not been adopted by Congress.

Section 1(d) may raise a potential area of concern regarding our current federal statutes: Title VII of the 1964 Civil Rights Act and the 1963 Equal Pay Act. The Equal Pay Act requires that equal pay be provided regardless of one's sex for work of equal skill, responsibility and effort under similar working conditions. Title VII imposes the same requirement of equal pay for equal work under the standards of the Equal Pay Act. Whether Title VII or the Equal Pay Act require equal pay for work that may not be equal in skill, effort, and responsibility but is of equal or comparable value is currently being litigated, and is likely to be definitively decided in the 1980s.

Section 1(e) raises several areas of potential concern. The Social Security Act, as mentioned earlier, presently includes several provisions that make distinctions on the basis of sex. New concepts, such as equally dividing earnings credits for social security purposes between husbands and wives ("earnings sharing"), thus providing credit for homemakers, will also have to be considered in formulating new legislation. Also, the unemployment insurance system may raise concerns. The system is operated by the states, and allows the states to establish standards for categories of eligibility. Persons who work part-time and women on maternity leave are often ineligible for unemployment compensation. The Unemployment Compensation Amendments of 1976 require as a condition for the Secretary of Labor's approval of a state unemployment compensation law, that no person be denied compensation under such law solely on the basis of pregnancy or termination of pregnancy. 26 U.S.C. 3304.

Jurisdiction to resolve some of these matters is shared between the states and the federal government. The federal/state reservation clause, a general reservation clause, or legislation would accommodate these concerns.

Although Federal employees are protected by regulation from discrimination on the basis of marital status, 5 CFR § 713.401, current federal law does not prohibit discrimination by employers on the basis of marital status as required by Section 2(a) or explicitly provide for paid maternity leave or comparable benefits as required by Section 2(b). A reservation or appropriate implementing legislation would accommodate these concerns.

ARTICLE 12—HEALTH CARE SERVICES

Potential areas of concern

One of the few areas where the Congress has failed to prohibit discrimination on the basis of sex is in the delivery of health care services. This particular omission may require specific implementing legislation. or an appropriate understanding.

Although neither Medicaid nor other programs provide fully comprehensive coverage for pre- and post-natal care to all needy women, as required by Section 2, the proposed Child Health Assurance Program, introduced as H.R. 4053 and S. 1204 (96th Cong., 1st sess.), would substantially accommodate this concern.

ARTICLE 13—CREDIT, FAMILY BENEFITS

Article 13 raises no areas of concern, with the exception that social relationships and the purely private activities of persons are beyond the limits of federal jurisdiction. *See* Article 1 *supra*.

Federal initiatives

Congress has enacted the Equal Credit Opportunity Act (ECOA) that prohibits discrimination on the basis of sex or marital status in any respect of a credit transaction. 15 U.S.C. 1691 *et seq.*

ARTICLE 14—WOMEN IN RURAL AREAS

Federal initiatives

The Tax Reform Act of 1976, Pub. L. No. 94-455, has substantially relieved the estate tax burden on farm women by increasing the amount of the estate that can pass without federal taxation. Congress has also amended the tax code to allow for the special valuation of farmland for less than fair market value under certain conditions. 26 U.S.C. 2032A.

Potential areas of concern

26 U.S.C. 2040(a) fails to consider contributions made in services as opposed to "money or money's worth" for the purpose of excluding a surviving joint tenant's interest in jointly held property at the time of the spouse's death. This provision particularly impacts on farm women. Federal law also prohibits a spouse employed by a spouse to establish and pay into a social security account. 26 U.S.C. 3121(b)(3)(A). This Article may require corrective legislation or reservations.

ARTICLE 15—LEGAL STATUS AND CAPACITY

Potential areas of concern

Creation and execution of contracts is generally governed by state law and therefore Article 15 would be subject to the federal/state reservation clause. However, distinctions on the basis of sex in state contract law may violate the 14th Amendment to the U.S. Constitution.

ARTICLE 16—DOMESTIC RELATIONS

Potential areas of concern

Matters relating to the family, such as marriage, divorce and child custody, are primarily reserved for state regulation. While the 14th Amendment to the U.S. Constitution would probably invalidate any classification or distinction based on sex that was not substantially related to an important government objective, *Craig* v. *Boren*, 429 U.S. 190 (1976); *see also Orr* v. *Orr*, 440 U.S. 268 (1979), the federal/state reservation clause would be applicable here.

ARTICLE 24—IMPLEMENTATION

The federal/state reservation clause would accommodate any concern raised by this Article.

ARTICLES 17-22—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

ARTICLES 23-30 (EXCEPT 24)—FINAL CLAUSES

Neither the administrative provisions nor the final clauses give rise to questions of conformity with U.S. law.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the promotion of equality between men and women,

Emphasizing that the eradication of *apartheid,* of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, and in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women, *Convinced* that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing or children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

ARTICLE 1

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

ARTICLE 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(*a*) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(*b*) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(*c*) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

(*d*) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(*e*) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(*f*) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(*g*) To repeal all national penal provisions which constitute discrimination against women.

ARTICLE 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

ARTICLE 4

1. Adoption by States Parties of temporary special measures aimed at accelerating *de facto* equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

ARTICLE 5

States Parties shall take all appropriate measures:

(*a*) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(*b*) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

ARTICLE 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

ARTICLE 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(*a*) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(*b*) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(*c*) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

ARTICLE 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

ARTICLE 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

ARTICLE 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(*a*) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(*b*) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(*c*) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;

(*d*) The same opportunities to benefit from scholarships and other study grants;

(*e*) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(*f*) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(*g*) The same opportunities to participate actively in sports and physical education;

(*h*) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

ARTICLE 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(*a*) The right to work as an inalienable right of all human beings;

(*b*) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(*c*) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

(*d*) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

(*e*) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

(*f*) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(*a*) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(*b*) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(*c*) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(*d*) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

ARTICLE 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to

ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

ARTICLE 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(*a*) The right to family benefits;

(*b*) The right to bank loans, mortgages and other forms of financial credit;

(*c*) The right to participate in recreational activities, sports and all aspects of cultural life.

ARTICLE 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(*a*) To participate in the elaboration and implementation of development planning at all levels;

(*b*) To have access to adequate health care facilities, including information, counselling and services in family planning;

(*c*) To benefit directly from social security programmes;

(*d*) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

(*e*) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;

(*f*) To participate in all community activities;

(*g*) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

(*h*) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

ARTICLE 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

ARTICLE 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in al. matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(*a*) The same right to enter into marriage;

(*b*) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(*c*) The same rights and responsibilities during marriage and at its dissolution;

(*d*) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(*e*) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(*f*) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(*g*) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(*h*) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and dispostion of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

ARTICLE 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination Against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States

Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

ARTICLE 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(*a*) Within one year after the entry into force for the State concerned; and (*b*) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfillment of obligations under the present Convention.

ARTICLE 19

1. The Committee shall adopt its own rules of procedure.

2. The Committee shall elect its officers for a term of two years.

ARTICLE 20

1. The Committee shall normally meet for a period of not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee.

ARTICLE 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

ARTICLE 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

ARTICLE 23

Nothing in this Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(*a*) In the legislation of a State Party; or

(*b*) In any other international convention, treaty or agreement in force for that State.

ARTICLE 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

ARTICLE 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

ARTICLE 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

ARTICLE 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

ARTICLE 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

ARTICLE 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of this Convention or accession thereto declare that it does not consider

itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

ARTICLE 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

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96th Congress }
2d Session }

SENATE

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PROTOCOL AMENDING THE INTERIM CONVENTION ON CONSERVATION OF NORTH PACIFIC FUR SEALS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL AMENDING THE INTERIM CONVENTION ON CONSERVATION OF NORTH PACIFIC FUR SEALS, BETWEEN THE UNITED STATES, CANADA, JAPAN, AND THE SOVIET UNION, SIGNED AT WASHINGTON, ON OCTOBER 14, 1980 (THE PROTOCOL)

November 12, 1980.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
79-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 1980.*

To the Senate of the United States:

I am pleased to transmit the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals between the United States, Canada, Japan, and the Soviet Union, signed in Washington on October 9, 1980.

The Interim Convention was signed in 1957; it replaced an earlier convention on North Pacific fur seals dating back to 1911. Under the two conventions, the herds of fur seals have been protected and managed, and the population has increased from 300,000 animals to approximately 1.7 million. The Interim Convention was extended in 1936 and 1969. A 1976 Protocol further extended the Convention and amended it in order to provide greater protection for fur seals. This Protocol extends the Interim Convention for an additional four years, until 1984. It also reflects the four signatory nations' recognition of the extensions of fisheries jurisdictions which have occurred since the entry into force of the 1976 Protocol.

I transmit also for the information of the Senate the report of the Department of State with respect to the Protocol.

I urge the Senate to act favorably at an early date on this Protocol.

JIMMY CARTER.

LETTER OF TRANSMITTAL.

THE WHITE HOUSE, *November 17, 1980.*

To the Senate of the United States:

I am pleased to transmit the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals between the United States, Canada, Japan, and the Soviet Union, signed in Washington on October 14, 1980.

The Interim Convention was signed in 1957; it replaced an earlier convention on North Pacific fur seals dating back to 1911. Under the two conventions, the herds of fur seals have been protected and managed, and the population has increased from 200,000 animals to approximately 1.7 million. The Interim Convention was extended in 1963 and 1969. A 1976 Protocol further extended the Convention and amended it in order to provide greater protection for the seals. This Protocol extends the Interim Convention for an additional four years, until 1984. It also reflects the four signatories' general recognition of the extensions of fisheries jurisdictions which have occurred since the entry into force of the 1976 Protocol.

I transmit also for the information of the Senate the report of the Department of State with respect to the Protocol.

I urge the Senate to act favorably at an early date on this Protocol.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 31, 1980.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to transmittal to the Senate for advice and consent to ratification, the Protocol Amending the Interim Convention on Conservation of North Pacific Fur Seals, between the United States, Canada, Japan, and the Soviet Union, signed at Washington, on October 14, 1980 (the Protocol).

The Interim Convention was signed in 1957; it replaced an earlier convention on North Pacific fur seals dating back to 1911. Under the two conventions, the herds of fur seals have been protected and managed, and the population has increased from 300,000 animals to approximately 1.7 million. The Interim Convention was extended in 1963 and 1969. A 1976 Protocol further extended the Convention and amended it in order to provide greater protection for fur seals. This Protocol extends the Interim Convention for an additional four years, until 1984. It also reflects the four signatory nations' recognition of the extensions of fisheries jurisdictions which have occurred since the entry into force of the 1976 Protocol.

The Interim Convention bans pelagic sealing, which United States scientists consider a wasteful method of harvesting seals. Should the Convention not be extended, the Japanese have indicated they would return to the practice. The Convention also allows the management of fur seal stocks throughout their range. Without it, the United States could manage fur seals within its fishery conservation zone, but would not have any means of control over taking outside the zone. In addition, the Convention allows the continuation of traditional Aleut harvesting of seals for subsistence.

The Department of Commerce has drafted an environmental impact statement on the possibilities of renegotiating the Interim Convention and has concluded that a four-year extension of the present agreement is the course of action which will provide the best protection to North Pacific fur seals throughout their range. The Department of Commerce, which participated with the Department of State in the negotiation of this Protocol, concurs in the view that early ratification of the Protocol is most desirable. I recommend that the Protocol be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted,

EDMUND S. MUSKIE.

1980 PROTOCOL AMENDING THE INTERIM CONVENTION ON CONSERVATION OF NORTH PACIFIC FUR SEALS

The Governments of Canada, Japan, the Union of Soviet Socialist Republics and the United States of America, Parties to the Interim Convention on Conservation of North Pacific Fur Seals, signed at Washington on February 9, 1957, as amended, hereinafter referred to as the Convention,

Desiring to amend the Covention,

Have agreed as follows:

ARTICLE I

The Convention shall be applied as amended by this Protocol as from the date of its entry into force.

ARTICLE II

In Article V, paragraph 2(e) of the Convention, "twenty-first" shall be replaced by "twenty-fifth".

ARTICLE III

In Article VI, paragraph 1 of the Convention, "except within the territorial waters of another State" shall be replaced by "except within the areas in which another State exercises fisheries jurisdiction".

ARTICLE IV

In Article XI of the Convention, "twenty-second" shall be replaced by "twenty-sixth".

ARTICLE V

In Article XIII, paragraph 4 of the Convention, "twenty-two" shall be replaced by "twenty-six".

ARTICLE VI

1. This Protocol shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Government of the United States of America as soon as possible.

2. A signatory Government which intends to ratify or accept this Protocol, may notify the Government of the United States of America that it will apply this Protocol provisionally in accordance with its laws and regulations pending fulfillment of domestic constitutional requirements for ratification or acceptance.

3. The Government of the United States of America shall notify the other signatory Governments of ratifications or acceptances deposited and of notifications of provisional application made.

4. This Protocol shall enter into force provisionally on the date on which instruments of ratification or acceptance have been deposited or the notifications of provisional application as referred to in paragraph 2 above have been made by all the signatory Governments. It shall continue in force provisionally until the date on which it enters into force definitively in accordance with the provisions of paragraph 5.

5. This Protocol shall enter into force definitively on the date on which instruments of ratification or acceptance have been deposited by all the signatory Governments.

6. The original of this Protocol shall be deposited with the Government of the United States of America, which shall communicate certified copies thereof to each of the Governments signatory to this Protocol.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

Done at Washington, this fourteenth day of October, nineteen hundred and eighty, in the English, French, Japanese, and Russian languages, each text equally authentic.

FOR THE GOVERNMENT OF CANADA:
POUR LE GOUVERNEMENT DU CANADA:
カナダ政府のために：
ОТ ИМЕНИ ПРАВИТЕЛЬСТВА КАНАДЫ:

FOR THE GOVERNMENT OF JAPAN:
POUR LE GOUVERNEMENT DU JAPON:
日本国政府のために：
ОТ ИМЕНИ ПРАВИТЕЛЬСТВА ЯПОНИИ:

Yoshio Hatano

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:
POUR LE GOUVERNEMENT DE L'UNION DES REPUBLIQUES SOCIALISTES SOVIETIQUES:
ソビエト社会主義共和国連邦政府のために：
ОТ ИМЕНИ ПРАВИТЕЛЬСТВА СОЮЗА СОВЕТСКИХ СОЦИАЛИСТИЧЕСКИХ РЕСПУБЛИК:

A. Dobrynin. (с заявлением).

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:
POUR LE GOUVERNEMENT DES ETATS-UNIS D'AMERIQUE:
アメリカ合衆国政府のために：
ОТ ИМЕНИ ПРАВИТЕЛЬСТВА СОЕДИНЕННЫХ ШТАТОВ АМЕРИКИ:

W D Busby

96TH CONGRESS
2d Session
SENATE
EXECUTIVE
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CONVENTION WITH CANADA WITH RESPECT TO TAXES ON INCOME AND CAPITAL

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CANADA WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT WASHINGTON ON SEPTEMBER 26, 1980, WITH A RELATED EXCHANGE OF NOTES

NOVEMBER 12, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
79-118 O
WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Convention between the United States of America and Canada with respect to Taxes on Income and Capital (the Convention), signed at Washington on September 26, 1980, and a related exchange of notes for the information of the Senate. I also transmit the report of the Department of State with respect to the Convention.

The Convention will replace the existing tax convention with Canada, signed in 1942, as amended by supplementary conventions signed in 1950, 1956 and 1966. It is based, in general, on the United States and OECD model conventions but deviates from the models in a number of important respects in order to take account of particular features of Canadian law and its interaction with United States law, the unique economic relationship between the United States and Canada, and the provisions of the existing convention.

As in the existing convention, the new Convention provides that the business profits of a resident of one Contracting State will not be subject to tax by the other State except to the extent that they are attributable to a permanent establishment which the resident has in the other State. The definition of a permanent establishment in the Convention is more comprehensive than that in the existing convention and is very similar to the definition in the United States model.

The Convention establishes maximum reciprocal rates of withholding at source for dividends, interest, and royalties. Although the rates exceed those in the United States model for several types of income, there are a number of significant reductions in withholding rates in comparison with the existing convention.

I recommend that the Senate give early and favorable consideration to the Convention and give advice and consent to its ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, October 16, 1980.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Convention between the United States of America and Canada with respect to Taxes on Income and Capital (the Convention), signed at Washington on September 26, 1980, and a related exchange of notes signed on the same day.

The existing income tax convention with Canada, which was signed in 1942 and amended for supplementary conventions in 1950, 1956 and 1966, is the second oldest United States tax convention in force. The new Convention revises the existing convention by accommodating changes in United States and Canadian law, with particular reference to Canada's 1971 tax reform, as well as changes in treaty policy.

The Convention is based, in general, on the United States and OECD model conventions. It deviates from the models, however, in a number of important respects in order to take account of particular features of Canadian law and its interaction with United States law, the unique economic relationship between the United States and Canada, and the provisions of the existing convention.

Like the existing convention, the new Convention provides that the business profits of a resident of one Contracting State will not be subject to tax by the other State except to the extent that they are attributable to a permanent establishment which the resident has in the other State. The definition of a permanent establishment in the new Convention is more comprehensive than that in the existing convention and is very similar to the definition in the United States model.

The Convention follows the normal practice of providing reciprocal exemption for international shipping and air transport income. It goes beyond the model, however, by exempting on a reciprocal basis, as in the existing convention, income from the international operation of motor vehicles. It also adds an exemption for railroad operating income and a limited exemption for income from the rental of railway equipment, motor vehicles, trailers, and containers.

The Convention establishes maximum reciprocal rates of withholding at source for dividends, interest, and royalties. Although the rates exceed those in the United States model for several types of income, there are a number of significant reductions in withholding rates in comparison with the existing convention.

Portfolio dividends remain subject to a maximum 15 percent rate of tax at source. The maximum rate of tax at source on direct investment dividends is, however, reduced to 10 percent, from the 15 percent rate provided in the existing convention. This reduced rate also applies to the Canadian tax on branch profits, presently being imposed at a rate of 15 percent. Unlike the existing convention, the Convention preserves for the United States its right to impose tax on dividends paid by a Canadian corporation where at least 50 percent of the gross income of that corporation is attributable to a United States permanent establishment of that corporation.

As in the existing convention, the maximum rate of withholding tax at source on interest is set at 15 percent. However, the new Convention provides several exceptions to that rule under which interest is exempt at source. Interest derived, guaranteed, or insured by a Contracting State, political subdivision, local authority, or instrumentality is exempt at source, as is interest paid by an entity not subject to tax in the source State and interest on trade credits between persons dealing at arm's length.

Artistic royalties, other than motion picture royalties, continue to be exempt at source. All other royalties are subject to a maximum source country tax rate of 10 percent, as compared to 15 percent under the existing convention.

Under the existing convention gains from the sale or exchange of capital assets are generally exempt from tax in the source State. The new Convention introduces a number of important modifications to that rule. As in the United States model, gains from the alienation of real property and property forming part of a permanent establishment may be taxed where the property or permanent establishment is situated. Consistent with current United States treaty policy, but not reflected in the United States model, the Convention further provides that gain from the alienation of shares in a corporation or interest in a partnership, estate, or trust, the property of which consists principally of real property, may be taxed by the country where the property is situated. A number of special rules are also provided which relate to specific aspects of Canadian tax treatment of capital gains when property is transferred by gift or when an individual gives up Canadian residence. These rules are designed to mesh the United States and Canadian tax systems in such cases.

In general, the rules in the Convention relating to the treatment of personal services income follow the pattern of the United States model. There are, however, some exceptions. In addition to the normal tests for the exemption of income from dependent personal services in the country where such services are rendered, a dollar threshold of $10,000 is provided. A special rule, not found in other United States conventions, is provided for reduced withholding, under certain circumstances, on remuneration from independent personal services.

The new Convention provides, as in the existing convention and United States model, that pensions and annuities are generally taxable in the State of residence of the recipient. However, it also provides that taxation by the residence State shall not exceed the amount that would be taxable if the recipient were a resident of the other State; and taxation is allowed in the State in which the payments arise, at a rate not in excess of 15 percent.

The Convention repeats, with certain modifications and refinements, the rules in the existing convention providing for reciprocal exemption of income derived by charitable organization of the other State and for the deductibility of contributions by residents of one State to such organizations in the other.

As in the model, items of income not dealt with elsewhere in the Convention are taxable in the State of residence of the recipient. However, in the Convention, such income is also taxable in the other State if it arises there.

In addition to the normal rules for the avoidance of double taxation, the Convention contains a rule not found in either the model or the existing convention for eliminating double taxation of United States citizens who are residents in Canada. Under Canadian law, the credit for foreign taxes on dividends, interest, and royalties is limited to 15 percent. Though the United States withholding rates under the Convention on these forms of income do not exceed 15 percent, United States citizens are subject to United States tax at normal progressive rates. Under the new Convention the United States agrees to give Canada the primary right to any tax on such income in excess of 15 percent, with the United States retaining only a residual right to tax.

The nondiscrimination protection of the Convention is somewhat narrower than the United States model, but is broader than the protection in the existing convention. In a rule not found in any other United States income tax treaty, expenses incurred by a resident of a Contracting State with respect to a convention or conference held in the other State are deductible to the same extent as if the convention were held in the State of residence.

Under the mutual agreement procedures of the Convention, if one State adjusts the accounts of a taxpayer the other State may make a corresponding adjustment (to the benefit of the taxpayer) even after the statute of limitations has run, if that other State has received notice of the case within six years from the end of the year to which the case relates. No such waiver of the statute is provided for in the existing convention. If, on the other hand, appropriate notice is not given, and the case involves an adjustment of arrangements between related persons, the first State agrees to withdraw the adjustment.

The Convention provides a number of transitional rules to protect taxpayer rights in going from the existing to the new convention.

The Convention provides for the termination of the United States-Canada estate tax convention of 1961. That convention is presently operative only on the United States side, because Canada has repealed its Federal estate tax. A 1928 note between the United States and Canada, providing relief from double taxation of shipping profits, is also terminated by the terms of the new Convention.

In an exchange of notes signed at the time of the signing of the Convention, it is agreed that the competent authorities of the two States will work out procedures for certifying the eligibility of organizations to receive tax exempt income and deductible contributions. The note also recognizes Canada's objections to the so-called "unitary apportionment" system used in several states of the United States to assess the income of corporations doing business in the state.

The Convention is subject to ratification. It will enter into force upon the exchange of instruments of ratification. Subject to transitional rules, the Convention will have effect, for taxes withheld at the source, for amounts paid or credited on or after the first day of the second month following entry into force; and for other taxes, for taxable years beginning on or after the first of January following entry into force.

The Convention will remain in force indefinitely unless terminated by one of the Contracting States. It may be terminated, on six months' diplomatic notice, after five years from its entry into force, or earlier in the event of significant changes in the law of either country which cannot be accommodated through negotiations.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted,

EDMUND S. MUSKIE.

CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND CANADA WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The United States of America and Canada,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

Have agreed as follows:

ARTICLE I

Personal scope

This Convention is generally applicable to persons who are residents of one or both of the Contracting States.

ARTICLE II

Taxes covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

2. The existing taxes to which the Convention shall apply are:

(a) In the case of Canada, the taxes imposed by the Government of Canada under Parts I, XIII and XIV of the Income Tax Act; and

(b) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code.

3. The Convention shall apply also to:

(a) Any identical or substantially similar taxes on income; and

(b) Taxes on capital,

which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes.

4. Notwithstanding the provisions of paragraphs 2(b) and 3, the Convention shall apply to:

(a) The United States accumulated earnings tax and personal holding company tax, to the extent, and only to the extent, necessary to implement the provisions of paragraphs 5 and 8 of Article X (Dividends);

(b) The United States excise taxes imposed with respect to private foundations, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXI (Exempt Organizations); and

(c) The United States social security taxes, to the extent, and only to the extent, necessary to implement the provisions of paragraph 4 of Article XXIX (Miscellaneous Rules).

ARTICLE III

General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) When used in a geographical sense, the term "Canada" means the territory of Canada, including any area beyond the territorial seas of Canada which, in accordance with international law and the laws of Canada, is an area within which Canada may exercise rights with respect to the seabed and subsoil and their natural resources;

(b) The term "United States" means:

(i) The United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory; and

(ii) When used in a geographical sense, such term also includes any area beyond the territorial seas of the United States which, in accordance with international law and the laws of the United States, is an area within which the United States may exercise rights with respect to the seabed and subsoil and their natural resources;

(c) The term "Canadian tax" means the Canadian taxes referred to in paragraphs 2(a) and 3(a) of Article II (Taxes Covered);

(d) The term "United States tax" means the United States taxes referred to in paragraphs 2(b) and 3(a) of Article II (Taxes Covered);

(e) The term "person" includes an individual, an estate, a trust, a company and any other body of persons;

(f) The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) The term "competent authority" means:

(i) In the case of Canada, the Minister of National Revenue or his authorized representative; and

(ii) In the case of the United States, the Secretary of the Treasury or his delegate;

(h) The term "international traffic" means any voyage of a ship or aircraft to transport passengers or property except where the principal purpose of the voyage is to transport passengers or property between places within a Contracting State;

(i) The term "State" means any national State, whether or not a Contracting State; and

(j) The term "the 1942 Convention" means the Convention and Protocol between the United States and Canada for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion in the case of Income Taxes signed at Washington on March 4, 1942, as amended by the Convention signed at Ottawa on June 12, 1950, by the Convention signed at Ottawa on August 8, 1956 and by the Supplementary Convention signed at Washington on October 25, 1966.

2. As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article XXVI (Mutual Agreement Procedures), have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE IV

Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that

State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, but in the case of an estate or trust, only to the extent that income derived by such estate or trust is liable to tax in that State, either in its hands or in the hands of its beneficiaries.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both States or in neither State, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(b) If the Contracting State in which he has his centre of vital interests cannot be determined, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both States or in neither State, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) If he is a citizen of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it was created under the laws in force in a Contracting State, it shall be deemed to be a resident of that State.

4. Where by reason of the provisions of paragraph 1 an estate, trust or other person (other than an individual or a company) is a resident of both Contracting States, the competent authorities of the States shall by mutual agreement endeavor to settle the question and to determine the mode of application of the Convention to such person.

5. Notwithstanding the provisions of the preceding paragraphs, an individual shall be deemd to be a resident of a Contracting State if:

(a) The individual is an employee of that State or of a political subdivision, local authority or instrumentality thereof rendering services in the discharge of functions of a governmental nature in the other Contracting State or in a third State; and

(b) The individual is subjected in the first-mentioned State to similar obligations in respect of taxes on income as are residents of the first-mentioned State.

The spouse and dependent children residing with such an individual and meeting the requirements of subparagraph (b) above shall also be deemed to be residents of the first-mentioned State.

ARTICLE V

Permanent establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of a resident of a Contracting State is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) A place of management;

(b) A branch;

(c) An office;

(d) A factory;

(e) A workshop; and

(f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment if, but only if, it lasts more than 12 months.

4. The use of a drilling rig or ship in a Contracting State to explore for or exploit natural resources constitutes a permanent establishment if, but only if, such use is for more than 3 months in any twelve-month period.

5. A person acting in a Contracting State on behalf of a resident of the other Contracting State—other than an agent of an independent status to whom paragraph 7 applies—shall be deemed to be a permanent establishment in the first-mentioned State if such person has, and habitually exercises in that State, an authority to conclude contracts in the name of the resident.

6. Notwithstanding the provisions of paragraphs 1, 2 and 5, the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for, or a person referred to in paragraph 5 engaged solely in, one or more of the following activities:

(a) The use of facilities for the purpose of storage, display or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) The purchase of goods or merchandise, or the collection of information, for the resident; and

(e) Advertising, the supply of information, scientific research or similar activities which have a preparatory or auxiliary character, for the resident.

7. A resident of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not constitute either company a permanent establishment of the other.

9. For the purposes of the Convention, the provisions of this Article shall be applied in determining whether any person has a permanent establishment in any State.

ARTICLE VI

Income from real property

1. Income derived by a resident of a Contracting State from real property (including from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention, the term "real property" shall have the meaning which it has under the taxation laws of the Contracting State in which the property in question is situated and shall include any option or similar right in respect thereof. The term shall in any case include usufruct of real property and rights to explore for or to exploit mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as real property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of real property and to income from the alienation of such property.

ARTICLE VII

Business profits

1. The business profits of a resident of a Contracting State shall be taxable only in that State unless the resident carries on business in the other Contracting State through a permanent establishment situated therein. If the resident carries on, or has carried on, business as aforesaid, the business profits of the resident may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where a resident of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and separate person engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident and with any other person related to the resident (within the meaning of paragraph 2 of Article IX (Related Persons)).

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. Nothing in this paragraph shall require a Contracting State to allow the deduction of any expenditure which, by reason of its nature, is not generally allowed as a deduction under the taxation laws of that State.

4. No business profits shall be attributed to a permanent establishment of a resident of a Contracting State by reason of the use thereof for either the mere purchase of goods or merchandise or the mere provision of executive, managerial or administrative facilities or services for such resident.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to a permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of the Convention, the business profits attributable to a permanent establishment shall include only those profits derived from the assets or activities of the permanent establishment.

ARTICLE VIII

Transportation

1. Notwithstanding the provisions of Articles VII (Business Profits) and XIII (Gains), profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic, and gains derived by a resident of a Contracting State from the alienation of ships or aircraft used principally in international traffic, shall be exempt from tax in the other Contracting State.

2. For the purposes of this Convention, profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic include profits from:

(a) The rental of ships or aircraft operated in international traffic;

(b) The use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in international traffic; and

(c) The rental of ships, aircraft or containers (including trailers and related equipment for the transport of containers) provided that such profits are incidental to profits referred to in paragraph 1, 2(a) or 2(b).

3. Notwithstanding the provisions of Article VII (Business Profits), profits derived by a resident of a Contracting State from a voyage of a ship where the principal purpose of the voyage is to transport passengers or property between places in the other Contracting State may be taxed in that other State.

4. Notwithstanding the provisions of Articles VII (Business Profits) and XII (Royalties), profits of a resident of a Contracting State engaged in the operation of motor vehicles or a railway as a common carrier or a contract carrier derived from:

(a) The transportation of passengers or property between a point outside the other Contracting State and any other point; or

(b) The rental of motor vehicles (including trailers) or railway rolling stock, or the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used to transport passengers or property between a point outside the other Contracting State and any other point

shall be exempt from tax in that other Contracting State.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to profits or gains referred to in those paragraphs derived by a resident of a Contracting State from the participation in a pool, a joint business or an international operating agency.

6. Notwithstanding the provisions of Article XII (Royalties), profits derived by a resident of a Contracting State from the use, maintenance or rental of railway rolling stock, motor vehicles, trailers or containers (including trailers and related equipment for the transport of containers) used in the other Contracting State for a period or periods not expected to exceed in the aggregate 183 days in any twelve-month period shall be exempt from tax in the other Contracting State except to the extent that such profits are attributable to a permanent establishment in the other State and liable to tax in the other State by reason of Article VII (Business Profits).

ARTICLE IX

Related persons

1. Where a person in a Contracting State and a person in the other Contracting State are related and where the arrangements between them differ from those which would be made between unrelated persons, each State may adjust the amount of the income, loss or tax payable to reflect the income, deductions, credits or allowances which would, but for those arrangements, have been taken into account in computing such income, loss or tax.

2. For the purposes of this Article, a person shall be deemed to be related to another person if either person participates directly or indirectly in the management or control of the other, or if any third person or persons participate directly or indirectly in the management or control of both.

3. Where an adjustment is made or to be made by a Contracting State in accordance with paragraph 1, the other Contracting State shall (notwithstanding any time or procedural limitations in the domestic law of that other State) make a corresponding adjustment to the income, loss or tax of the related person in that other State if:

(a) It agrees with the first-mentioned adjustment; and

(b) Within six years from the end of the taxable year to which the first-mentioned adjustment relates, the competent authority of the other State has been notified of the first-mentioned adjustment.

4. In the event that the notification referred to in paragraph 3 is not given within the time period referred to therein, and if the person to whom the first-mentioned adjustment relates has not received, at least six months prior to the expiration of such time period, notification of such adjustment from the Contracting State which has made or is to make such adjustment that State shall, notwithstanding the provisions of paragraph 1, not make the first-mentioned adjustment to the extent that such adjustment would give rise to double taxation.

5. The provisions of paragraphs 3 and 4 shall not apply in the case of fraud, willful default or neglect or gross negligence.

ARTICLE X

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such dividends, the tax so charged shall not exceed:

(a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 10 per cent of the voting stock of the company paying the dividends;

(b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income subjected to the same taxation treatment as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraph 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

5. Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Nothing in this Convention shall be construed as preventing a Contracting State from imposing a tax on the earnings of a company attributable to permanent establishments in that State, in addition to the tax which would be chargeable on the earnings of a company which is a resident of that State, provided that any additional tax so imposed shall not exceed 10 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years. For the purposes of this paragraph, the term "earnings" means the amount by which the business profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years exceeds the sum of:

(a) Business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years;

(b) All taxes, other than the additional tax referred to in this paragraph, imposed on such profits in that State;

(c) The profits reinvested in that State, provided that where that State is Canada, such amount shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect to investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle hereof; and

(d) Five hundred thousand Canadian dollars ($500,000) or its equivalent in United States currency, less any amounts deducted by the company, or by an associated company with respect to the same or a similar business, under this subparagraph (d); for the purposes of this subparagraph (d) a company is associated with another company if one company directly or indirectly controls the other, or both companies are directly or indirectly controlled by the same person or persons, or if the two companies deal with each other not at arm's length.

7. Notwithstanding the provisions of paragraph 5, a Contracting State, other than a Contracting State that imposes the additional tax on earnings referred to in paragraph 6, may tax a dividend paid by a company to the extent that the dividend is attributable to profits earned in taxable years beginning after the date of signature of the Convention if, for the three-year period ending with the close of the company's taxable period preceding the declaration of the dividend (or for such part of that three-year period as the company has been in existence, or for the first taxable year if the dividend was declared in that taxable year), at least 50 per cent of such company's gross income from all sources was included in the computation of the business profits attributable to a permanent establishment which such company had in that State; provided that where a resident of the other Contracting State is the beneficial owner of such dividend any tax so imposed on the dividend shall be subject to the limitations of paragraph 2 or the rules of paragraph 4, as the case may be.

8. Notwithstanding the provisions of paragraph 5, a company which is a resident of Canada and which has income subject to tax in the United States (without regard to the provisions of the Convention) may be liable to the United States accumulated earnings tax and personal holding company tax but only if 50 per cent or more in value of the outstanding voting shares of the company is owned, directly or indirectly, throughout the last half of its taxable year by citizens or residents of the United States (other than citizens of Canada who do not have immigrant status in the United States or who have not been residents in the United States for more than three taxable years) or by residents of a third State.

ARTICLE XI

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such interest, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State shall be exempt from tax in that State if:

(a) The interest is beneficially owned by the other Contracting State, a political subdivision or local authority thereof or an instrumentality of such other State, subdivision or authority, and is not subject to tax by that other State;

(b) The interest is beneficially owned by a resident of the other Contracting State and is paid with respect to debt obligations issued at arm's length and guaranteed or insured by that other State or a political subdivision thereof or an instrumentality of such other State or subdivision which is not subject to tax by that other State;

(c) The interest is beneficially owned by a resident of the other Contracting State and is paid by the first-mentioned State, a political subdivision or local authority thereof or an instrumentality of such first-mentioned State, subdivision or authority which is not subject to tax by that first-mentioned State;

(d) The interest is beneficially owned by a seller who is a resident of the other Contracting State and is paid by a purchaser in connection with the sale on credit of any equipment, merchandise or services, except where the sale is made between persons dealing with each other not at arm's length; or

(e) The interest is paid by a company created under the laws in force in the other Contracting State with respect to an obligation entered into before the date of signature of this Convention, provided that such interest would have been exempt from tax in the first-mentioned State under Article XII of the 1942 Convention.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation laws of the Contracting State in which the income arises. However, the term "interest" does not include income dealt with in Article X (Dividends).

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

6. For the purposes of this Article, interest shall be deemed to arise in a Contracting State when the payer is that State itself, or a political subdivision, local authority or resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship,

the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of the Convention.

8. Where a resident of a Contracting State pays interest to a person other than a resident of the other Contracting State, that other State may not impose any tax on such interest except insofar as it arises in that other State or insofar as the debt-claim in respect of which the interest is paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

ARTICLE XII

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of such royalties, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. Notwithstanding the provisions of paragraph 2, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion picture films and works on film or videotape for use in connection with television) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including motion picture films and works on film or videotape for use in connection with television), any patent, trademark, design or model, plan, secret formula or process, or for the use of, or the right to use, tangible personal property or for information concerning industrial, commercial or scientific experience, and, notwithstanding the provisions of Article XIII (Gains), includes gains from the alienation of any intangible property or rights described in this paragraph to the extent that such gains are contingent on the productivity, use or subsequent disposition of such property or rights.

5. The provisions of paragraphs 2 and 3 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article VII (Business Profits) or Article XIV (Independent Personal Services), as the case may be, shall apply.

6. For the purposes of this Article, royalties shall be deemed to arise in a Contracting State when the payer is that State itself, or a

political subdivision, local authority or resident of that State. However:

(a) Except as provided in subparagraph (b), where the person paying the royalties, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated and not in the State of which the payer is a resident; and

(b) Where the royalties are for the use of intangible property or tangible personal property in a Contracting State, then such royalties shall be deemed to arise in that State and not in the State of which the payer is a resident.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

8. Where a resident of a Contracting State pays royalties to a person other than a resident of the other Contracting State, that other State may not impose any tax on such royalties except insofar as they arise in that other State or insofar as the right or property in respect of which the royalties are paid is effectively connected with a permanent establishment or a fixed base situated in that other State.

ARTICLE XIII

Gains

1. Gains derived by a resident of a Contracting State from the alienation of real property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of personal property forming part of the business property of a permanent establishment which a resident of a Contracting State has or had (within the twelve-month period preceding the date of alienation) in the other Contracting State or of personal property pertaining to a fixed base which is or was available (within the twelve-month period preceding the date of alienation) to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment or of such a fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of:

(a) Shares forming part of a substantial interest in the capital stock of a company which is not a resident of that State the value of which shares is derived principally from real property situated in the other Contracting State; or

(b) An interest in a partnership, trust or estate the value of which is derived principally from real property situated in the other Contracting State

may be taxed in that other State, provided that the laws in force in the first-mentioned State at the time of such alienation would, in comparable circumstances, subject to taxation gains derived by a resident of that other State. For the purposes of this paragraph,

(c) The term "real property" includes the shares of a company the value of which shares is derived principally from real property or an interest in a partnership, trust or estate referred to in subparagraph (b), but does not include property (other than mines, oil or gas wells, rental property or property used for agriculture or forestry) in which the business of the company, partnership, trust or estate is carried on; and

(d) A substantial interest exists when the resident and persons related thereto own 10 per cent or more of the shares of any class of the capital stock of a company.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

5. The provisions of paragraph 4 shall not affect the right of a Contracting State to levy a tax on gains from the alienation of property derived by an individual who is a resident of the other Contracting State if such individual:

(a) Was a resident of the first-mentioned State for 120 months during any period of 20 consecutive years; and

(b) Was a resident of the first-mentioned State at any time during the ten years immediately preceding the alienation of the property.

6. Where an individual (other than a citizen of the United States) who was a resident of Canada became a resident of the United States, in determining his liability to United States taxation in respect of any gain from the alienation of a principal residence in Canada owned by him at the time he ceased to be a resident of Canada, the adjusted basis of such property shall be no less than its fair market value at that time.

7. Where at any time an individual is treated for the purposes of taxation by a Contracting State as having alienated a property and is taxed in that State by reason thereof and the domestic law of the other Contracting State at such time defers (but does not forgive) taxation, that individual may elect in his annual return of income for the year of such alienation to be liable to tax in the other Contracting State in that year as if he had, immediately before that time, sold and repurchased such property for an amount equal to its fair market value at that time.

8. Where a resident of a Contracting State alienates property in the course of a corporate organization, reorganization, amalgamation, division or similar transaction and profit, gain or income with respect to such alienation is not recognized for the purpose of taxation in that

State, if requested to do so by the person who acquires the property, the competent authority of the other Contracting State may agree, in order to avoid double taxation and subject to terms and conditions satisfactory to such competent authority, to defer the recognition of the profit, gain or income with respect to such property for the purpose of taxation in that other State until such time and in such manner as may be stipulated in the agreement.

9. Where a resident of a Contracting State alienates property which may in accordance with this Article be taxed in the other Contracting State and which was owned by a resident of the first-mentioned State on the date of signature of this Convention, the amount of the gain which is liable to tax in that other State in accordance with this Article shall be reduced by the proportion of the gain attributable (on a monthly basis), or such greater portion of the gain as is shown to the satisfaction of the competent authority of the other State to be reasonably attributable, to the period ending on December 31 of the year in which the Convention enters into force; the provisions of this paragraph shall not apply to property which on the date of signature of the Convention formed part of the business property of a permanent establishment or pertained to a fixed base in the other Contracting State.

ARTICLE XIV

Independent personal services

Income derived by an individual who is a resident of a Contracting State in respect of independent personal services may be taxed in that State. Such income may also be taxed in the other Contracting State if the individual has or had a fixed base regularly available to him in that other State but only to the extent that the income is attributable to the fixed base.

ARTICLE XV

Dependent personal services

1. Subject to the provisions of Articles XVIII (Pensions and Annuities) and XIX (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in a calendar year in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) Such remuneration does not exceed ten thousand dollars ($10,000) in the currency of that other State; or

(b) The recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in that year and the remuneration is not borne by an employer who is a resident of that other State or by a permanent establishment or a fixed base which the employer has in that other State.

3. Notwithstanding the provisions of paragraphs 1 and 2, remuneration derived by a resident of a Contracting State in respect of an employment regularly exercised in more than one State on a ship, aircraft, motor vehicle or train operated by a resident of that Contracting State shall be taxable only in that State.

ARTICLE XVI

Artistes and athletes

1. Notwithstanding the provisions of Articles XIV (Independent Personal Services) and XV (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities do not exceed fifteen thousand dollars ($15,000) in the currency of that other State for the calendar year concerned.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles VII (Business Profits), XIV (Independent Personal Services) and XV (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

3. The provisions of this Article shall not apply to the income of an athlete in respect of an employment with a team which participates in a league with regularly scheduled games in both Contracting States.

ARTICLE XVII

Withholding of taxes in respect of independent personal services

1. Deduction and withholding of tax on account of the tax liability for a taxable year on remuneration paid to an individual who is a resident of a Contracting State (including an entertainer or athlete) in respect of the performance of independent personal services in the other Contracting State may be required by that other State, but with respect to the first five thousand dollars ($5,000) in the currency of that other State, paid as remuneration in that taxable year by each payer, such deduction and withholding shall not exceed 10 per cent of the payment.

2. Where the competent authority of a Contracting State considers that an amount that would otherwise be deducted or withheld from any amount paid or credited to an individual who is a resident of the other Contracting State in respect of the performance of independent

personal services in the first-mentioned State is excessive in relation to the estimated tax liability for the taxable year of that individual in the first-mentioned State, it may determine that a lesser amount will be deducted or withheld.

3. The provisions of this Article shall not affect the liability of a resident of a Contracting State referred to in paragraph 1 or 2 for tax imposed by the other Contracting State.

ARTICLE XVIII

Pensions and annuities

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State, but the amount of any pension included in income for the purposes of taxation in that other State shall not exceed the amount that would be included in the first-mentioned State if the recipient were a resident thereof.

2. However:

(a) Pensions may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of a periodic pension payment, the tax so charged shall not exceed 15 per cent of the gross amount of such payment; and

(b) Annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State; but if a resident of the other Contracting State is the beneficial owner of an annuity payment, the tax so charged shall not exceed 15 per cent of the portion of such payment that is liable to tax in the first-mentioned State.

3. For the purposes of this Convention, the term "pensions" includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances and amounts paid under a sickness, accident or disability plan, but does not include payments under an income-averaging annuity contract or any benefit referred to in paragraph 5.

4. For the purposes of the Convention, the term "annuities" means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered), but does not include a payment that is not a periodic payment or any annuity the cost of which was deductible for the purposes of taxation in the Contracting State in which it was acquired.

5. Benefits under the social security legislation in a Contracting State paid to a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned State.

6. Alimony and other similar amounts (including child support payments) arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State, but the amount included in income for the purposes of taxation in that other State shall not exceed the amount that would be included in income in the first-mentioned State if the recipient were a resident thereof.

ARTICLE XIX

Government service

Remuneration, other than a pension, paid by a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article XIV (Independent Personal Services), XV (Dependent Personal Services) or XVI (Artistes and Athletes), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid in respect of services rendered in connection with a trade or business carried on by a Contracting State or a political subdivision or local authority thereof.

ARTICLE XX

Students

Payments which a student, apprentice or business trainee, who is or was immediately before visiting a Contracting State a resident of the other Contracting State, and who is present in the first-mentioned State for the purpose of his full-time education or training, receives for the purpose of his maintenance, education or training shall not be taxed in that State provided that such payments are made to him from outside that State.

ARTICLE XXI

Exempt organizations

1. Subject to the provisions of paragraph 3, income derived by a religious, scientific, literary, educational or charitable organization shall be exempt from tax in a Contracting State if it is resident in the other Contracting State but only to the extent that such income is exempt from tax in that other State.

2. Subject to the provisions of paragraph 3, income referred to in Articles X (Dividends) and XI (Interest) derived by a trust, company or other organization constituted and operated exclusively to administer or provide benefits under one or more funds or plans established to provide pension, retirement or other employee benefits shall be exempt from tax in a Contracting State if it is resident in the other Contracting State and its income is generally exempt from tax in that other State.

3. The provisions of paragraphs 1 and 2 shall not apply with respect to the income of a trust, company or other organization from carrying on a trade or business or from a related person other than a person referred to in paragraph 1 or 2.

4. A religious, scientific, literary, educational or charitable organization which is resident in Canada and which has received substantially all of its support from persons other than citizens or residents of the United States shall be exempt in the United States from the United States excise taxes imposed with respect to private foundations.

5. For the purposes of United States taxation, contributions by a citizen or resident of the United States to an organization which is resident in Canada, which is generally exempt from Canadian tax and which could qualify in the United States to receive deductible contributions if it were resident in the United States shall be treated as

charitable contributions; however, such contributions (other than such contributions to a college or university at which the citizen or resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of the United States in respect of the deductibility of charitable contributions to the income of such citizen or resident arising in Canada. The preceding sentence shall not be interpreted to allow in any taxable year deductions for charitable contributions in excess of the amount allowed under the percentage limitations of the laws of the United States in respect of the deductibiliy of charitable contributions.

6. For the purposes of Canadian taxation, gifts by a resident of Canada to an organization which is resident in the United States, which is generally exempt from United States tax and which could qualify in Canada to receive deductible gifts if it were created or established and resident in Canada shall be treated as gifts to a registered charity; however, such gifts (other than such gifts to a college or university at which the resident or a member of his family is or was enrolled) shall not be deductible in any taxable year to the extent that they exceed an amount determined by applying the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities to the income of such resident arising in the United States. The preceding sentence shall not be interpreted to allow in any taxable year deductions for gifts to registered charities in excess of the amount allowed under the percentage limitations of the laws of Canada in respect of the deductibility of gifts to registered charities.

ARTICLE XXII

Other income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State, except that if such income arises in the other Contracting State it may also be taxed in that other State.

2. To the extent that income distributed by an estate or trust is subject to the provisions of paragraph 1, then, notwithstanding such provisions, income distributed by an estate or trust which is a resident of a Contracting State to a resident of the other Contracting State who is a beneficiary of the estate or trust may be taxed in the first-mentioned State and according to the laws of that State, but the tax so charged shall no exceed 15 per cent of the gross amount of the income; provided, however, that such income shall be exempt from tax in the first-mentioned State to the extent of any amount distributed out of income arising outside that State.

ARTICLE XXIII

Capital

1. Capital represented by real property, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by personal property forming part of the business property of a permanent establishment which a resident of a

Contracting State has in the other Contracting State, or by personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated by a resident of a Contracting State in international traffic, and by personal property pertaining to the operation of such ships and aircraft, shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE XXIV

Elimination of double taxation

1. In the case of the United States, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States, or to a company electing to be treated as a domestic corporation, as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada; and, in the case of a company which is a resident of the United States owning at least 10 percent of the voting stock of a company which is a resident of Canada from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income tax paid or accrued to Canada by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of income tax paid or accrued to Canada, but shall not exceed that proportion of the United States tax that taxable income arising in Canada bears to the entire taxable income.

2. In the case of Canada, subject to the provisions of paragraphs 4, 5 and 6, double taxation shall be avoided as follows:

(a) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada and to any subsequent modification of those provisions (which shall not affect the general principle hereof), and unless a greater deduction or relief is provided under the law of Canada, income tax paid or accrued to the United States on profits, income or gains arising in the United States shall be deducted from any Canadian tax payable in respect of such profits, income or gains; and

(b) Subject to the provisions of the law of Canada regarding the determination of the exempt surplus of a foreign affiliate and to any subsequent modification of those provisions (which shall not affect the general principle hereof), for the purposes of computing Canadian tax, a company which is a resident of Canada shall be allowed to deduct in computing its taxable income any dividend received by it out of the exempt surplus of a foreign affiliate which is a resident of the United States.

3. For the purposes of this Article:

(a) Profits, income or gains (other than gains to which paragraph 5 of Article XIII (Gains) applies) of a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) shall be deemed to arise in that other State; and

(b) Profits, income or gains of a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention (without regard to paragraph 2 of Article XXIX (Miscellaneous Rules)) or to which paragraph 5 of Article XIII (Gains) applies shall be deemed to arise in the first-mentioned State.

4. Where a United States citizen is a resident of Canada, the following rules shall apply:

(a) Canada shall allow a deduction from the Canadian tax in respect of income tax paid or accrued to the United States in respect of profits, income or gains which arise (within the meaning of paragraph 3) in the United States, except that such deduction need not exceed the amount of the tax that would be paid to the United States if the resident were not a United States citizen; and

(b) For the purposes of computing the United States tax, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (a). The credit so allowed shall not reduce that portion of the United States tax that is deductible from Canadian tax in accordance with subparagraph (a).

5. Notwithstanding the provisions of paragraph 4, where a United States citizen is a resident of Canada, the following rules shall apply in respect of the items of income referred to in Article X (Dividends), XI (Interest) or XII (Royalties) which arise (within the meaning of paragraph 3) in the United States, as long as the law in force in Canada allows a deduction in computing income for the portion of any foreign tax paid in respect of such items which exceeds 15 percent of the amount thereof:

(a) The deduction so allowed in Canada shall not be reduced by any credit or deduction for income tax paid or accrued to Canada allowed in computing the United States tax on such items;

(b) Canada shall allow a deduction from the Canadian tax in respect of the income tax paid or accrued to the United States on such items, except that such deduction need not exceed 15 per cent of the gross amount of such items that has been included in computing the income of the citizen for Canadian tax purposes; and

(c) For the purposes of computing the United States tax on such items, the United States shall allow as a credit against United States tax the income tax paid or accrued to Canada after the deduction referred to in subparagraph (b). The credit so allowed shall reduce only that portion of the United States tax on such items which exceeds 15 per cent of the amount thereof included in computing United States taxable income.

6. Where a United States citizen is a resident of Canada, items of income referred to in paragraph 4 or 5 shall, notwithstanding the provisions of paragraph 3, be deemed to arise in Canada to the extent necessary to avoid the double taxation of such income under paragraph 4(b) or paragraph 5(c).

7. For the purposes of this Article, any reference to "income tax paid or accrued" to a Contracting State shall include Canadian tax and United States tax, as the case may be, and taxes of general application which are paid or accrued to a political subdivision or local authority of that State, which are not imposed by that political subdivision or local authority in a manner inconsistent with the provisions of the Convention and which are substantially similar to the taxes of that State referred to in paragraphs 2 and 3(a) of Article II (Taxes Covered).

8. Where a resident of a Contracting State owns capital which, in accordance with the provisions of the Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the capital of that resident an amount equal to the capital tax paid in that other State. The deduction shall not, however, exceed that part of the capital tax, as computed before the deduction is given, which is attributable to the capital which may be taxed in that other State.

ARTICLE XXV

Non-Discrimination

1. Citizens of a Contracting State, who are residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected.

2. Citizens of a Contracting State, who are not residents of the other Contracting State, shall not be subjected in that other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of any third State in the same circumstances (including State of residence) are or may be subjected.

3. In determining the taxable income of an individual who is a resident of a Contracting State there shall be allowed as a deduction in respect of any other person who is a resident of the other Contracting State and who is dependent on the individual for support the amount that would be so allowed if that other person were a resident of the first-mentioned State.

4. Where a married individual who is a resident of Canada and not a citizen of the United States has income that is taxable in the United States pursuant to Article XV (Dependent Personal Services), the United States tax with respect to such income shall not exceed such proportion of the total United States tax that would be payable for the taxable year if both the individual and his spouse were United States citizens as the individual's taxable income determined without

regard to this paragraph bears to the amount that would be the total taxable income of the individual and his spouse. For the purposes of this paragraph,

(a) The "total United States tax" shall be determined as if all the income of the individual and his spouse arose in the United States; and

(b) A deficit of the spouse shall not be taken into account in determining taxable income.

5. Any company which is a resident of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of a third State, are or may be subjected.

6. Notwithstanding the provisions of Article XXIV (Elimination of Double Taxation), the taxation on a permanent establishment which a resident of a Contracting State has in the other Contracting State shall not be less favorably levied in the other State than the taxation levied on residents of the other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

7. Except where the provisions of paragraph 1 of Article IX (Related Persons), paragraph 7 of Article XI (Interest) or paragraph 7 of Article XII (Royalties) apply, interest, royalties and other disbursements paid by a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

8. The provisions of paragraph 7 shall not affect the operation of any provision of the taxation laws of a Contracting State:

(a) Relating to the deductibility of interest and which is in force on the date of signature of this Convention (including any subsequent modification of such provisions that does not change the general nature thereof); or

(b) Adopted after such date by a Contracting State and which is designed to ensure that a person who is not a resident of that State does not enjoy, under the laws of that State, a tax treatment that is more favorable than that enjoyed by residents of that State.

9. Expenses incurred by a citizen or resident of a Contracting State with respect to any convention (including any seminar, meeting, con-

gress or other function of a similar nature) held in the other Contracting State shall, for the purposes of taxation in the first-mentioned State, be deductible to the same extent that such expenses would be deductible if the convention were held in the first-mentioned State.

10. Notwithstanding the provisions of Article II (Taxes Covered), this Article shall apply:

(a) In the case of Canada, to all taxes imposed under the Income Tax Act; and

(b) In the case of the United States, to all taxes imposed under the Internal Revenue Code.

ARTICLE XXVI

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case in writing to the competent authority of the Contracting State of which he is a resident or, if he is a resident of neither Contracting State, of which he is a national.

2. The competent authority of the Contracting State to which the case has been presented shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Except where the provisions of Article IX (Related Persons) apply, any agreement reached shall be implemented notwithstanding any time or other procedural limitations in the domestic law of the Contracting States, provided that the competent authority of the other Contracting State has received notification that such a case exists within six years from the end of the taxable year to which the case relates.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Contracting States may agree:

(a) To the same attribution of profits to a resident of a Contracting State and its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits or allowances between persons;

(c) To the same determination of the source, and the same characterization, of particular items of income;

(d) To a common meaning of any term used in the Convention;

(e) To the elimination of double taxation with respect to income distributed by an estate or trust;

(f) To the elimination of double taxation with respect to a partnership; or

(g) To increases in any dollar amounts referred to in the Convention to reflect monetary or economic developments.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. Each of the Contracting States will endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not enure to the benefit of persons not entitled thereto. However, nothing in this paragraph shall be construed as imposing on either of the Contracting States the obligation to carry out administrative measures of a different nature from those used in the collection of its own tax or which would be contrary to its public policy (ordre public).

5. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE XXVII

Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the taxation laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the administration and enforcement in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall endeavor to obtain the information to which the request relates in the same way as if its own taxation was involved notwithstanding the fact that the other State does not, at that time, need such information. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall endeavor to provide information under this Article in the form requested, such as depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) To carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) To supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

(c) To supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. Notwithstanding the provisions of Article II (Taxes Covered), for the purposes of this Article the Convention shall apply:

(a) In the case of Canada, to all taxes imposed by the Government of Canada on estates and gifts and under the Income Tax Act; and

(b) In the case of the United States, to all taxes imposed under the Internal Revenue Code.

ARTICLE XXVIII

Diplomatic agents and consular officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE XXIX

Miscellaneous rules

1. The provisions of this Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of the tax imposed by that State.

2. Except as provided in paragraph 3, nothing in the Convention shall be construed as preventing a Contracting State from taxing its residents (as determined under Article IV (Residence)) and, in the case of the United States, its citizens (including a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of ten years following such loss) and companies electing to be treated as domestic corporations, as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

3. The provisions of paragraph 2 shall not affect the obligations undertaken by a Contracting State:

(a) Under paragraphs 3 and 4 of Article IX (Related Persons), paragraphs 6 and 7 of Article XIII (Gains), paragraph 5 of Article XXIX (Miscellaneous Rules), paragraphs 3 and 5 of Article XXX (Entry into Force), and Articles XVIII (Pensions and Annuities), XIX (Government Service), XXI (Exempt Organizations), XXIV (Elimination of Double Taxation), XXV (Non-Discrimination) and XXVI (Mutual Agreement Procedure); and

(b) Under Article XX (Students), toward individuals who are neither citizens of, nor have immigrant status in, that State.

4. With respect to taxable years not barred by the statute of limitations ending on or before December 31 of the year in which the Con-

vention enters into force, income from personal services not subject to tax by the United States under the 1942 Convention shall not be considered wages or net earnings from self-employment for purposes of social security taxes imposed under the Internal Revenue Code.

5. A United States citizen who is a resident of Canada and a beneficiary of a Canadian registered retirement savings plan may elect, under rules established by the competent authority of the United States, to defer United States taxation with respect to any income accrued in the plan but not distributed by the plan, until such time as a distribution is made from such plan, or any plan substituted therefor.

6. If 25 per cent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed in that State on that company with respect to dividends (other than dividends referred to in paragraph 2(a) of Article X (Dividends)), interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Article X (Dividends), XI (Interest) or XII (Royalties), that other State may tax such dividends, interest or royalties as if there were no convention between the United States and Canada with respect to taxes on income and on capital.

ARTICLE XXX

Entry into force

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Ottawa as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and, subject to the provisions of paragraph 3, its provisions shall have effect:

(a) For tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties) and XVIII (Pensions and Annuities), with respect to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) For other taxes, with respect to taxable years beginning on or after the first day of January next following the date on which the Convention enters into force; and

(c) Notwithstanding the provisions of subparagraph (b), for the taxes covered by paragraph 4 of Article XXIX (Miscellaneous Rules) with respect to all taxable years referred to in that paragraph.

3. For the purposes of applying the United States foreign tax credit in relation to taxes paid or accrued to Canada:

(a) Notwithstanding the provisions of paragraph 2(a) of Article II (Taxes Covered), the tax on 1971 undistributed income on hand imposed by Part IX of the Income Tax Act of Canada shall be considered to be an income tax for distributions made on or after the first day of January 1972 and before the first day of January 1979, and shall be considered imposed upon the recipient of a distribution, in the proportion that the distribution out of undistributed income with respect to which the tax has been paid bears to 85 per cent of such undistributed income; and

(b) The principles of paragraph 6 of Article XXIV (Elimination of Double Taxation) shall have effect for taxable years beginning on or after the first day of January 1976.

Any claim for refund based on the provisions of this paragraph may be filed on or before June 30 of the calendar year following that in which the Convention enters into force, notwithstanding any rule of domestic law to the contrary.

4. Subject to the provisions of paragraph 5, the 1942 Convention shall cease to have effect for taxes for which this Convention has effect in accordance with the provisions of paragraph 2.

5. Where any greater relief from tax would have been afforded by any provision of the 1942 Convention than under this Convention, any such provision shall continue to have effect for the first taxable year with respect to which the provisions of this Convention have effect under paragraph 2(b).

6. The 1942 Convention shall terminate on the last date on which it has effect in accordance with the preceding provisions of this Article.

7. The Exchange of Notes between the United States and Canada dated August 2 and September 17, 1928, providing for relief from double income taxation on shipping profits, is terminated. Its provisions shall cease to have effect with respect to taxable years beginning on or after the first day of January next following the date on which this Convention enters into force.

8. The provisions of the Convention between the Government of Canada and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on the Estates of Deceased Persons signed at Washington on February 17, 1961 shall continue to have effect with respect to estates of persons deceased prior to the first day of January next following the date on which this Convention enters into force but shall cease to have effect with respect to estates of persons deceased on or after that date. Such Convention shall terminate on the last date on which it has effect in accordance with the preceding sentence.

ARTICLE XXXI

Termination

1. This Convention shall remain in force until terminated by a Contracting State.

2. Either Contracting State may terminate the Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels.

3. Where a Contracting State considers that a significant change introduced in the taxation laws of the other Contracting State should be accommodated by a modification of the Convention, the Contracting States shall consult together with a view to resolving the matter; if the matter cannot be satisfactorily resolved, the first-mentioned State may terminate the Convention in accordance with the procedures set forth in paragraph 2, but without regard to the 5 year limitation provided therein.

4. In the event the Convention is terminated, the Convention shall cease to have effect:

(a) For tax withheld at the source on income referred to in Articles X (Dividends), XI (Interest), XII (Royalties), XVIII (Pensions and Annuities) and paragraph 2 of Article XXII (Other Income), with respect to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2; and

(b) For other taxes, with respect to taxable years beginning on or after the first day of January next following the expiration of the 6 months' period referred to in paragraph 2.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE in two copies at Washington this twenty-sixth day of September, 1980, in the English and French languages, each text being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

G. WILLIAM MILLER.

FOR THE GOVERNMENT OF CANADA:

ALLAN J. MACEACHEN.

WASHINGTON, D.C., *September 26, 1980.*

Hon. G. WILLIAM MILLER,
Secretary of the Treasury,
Washington, D.C.

SIR: I have the honour to refer to the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital, signed today, and to confirm certain understandings reached between the two Governments with respect to the Convention.

1. In French, the term "société" also means a "corporation" within the meaning of Canadian law.

2. The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as a religious, scientific, literary, educational or charitable organization entitled to exemption under paragraph 1 of Article XXI (Exempt Organizations), or as an eligible recipient of the charitable contributions or gifts referred to in paragraphs 5 and 6 of ArticleXXI, with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States. If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such first-mentioned Contracting State shall accept the certification of the administering agency agency of the other Contracting State as to such status for the purpose of making the necessary determinations under paragraphs 1, 5 and 6 of Article XXI.

It is further agreed that the term "family", as used in paragraphs 5 and 6 of Article XXI, means an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants and adopted descendants.

3. It is the position of Canada that the so-called "unitary apportionment" method used by certain states of the United States to

allocate income to United States offices or subsidiaries of Canadian companies results in inequitable taxation and imposes excessive administrative burdens on Canadian companies doing business in those states. Under that method the profit of a Canadian company on its United States business is not determined on the basis of arm's-length relations but is derived from a formula taking account of the income of the Canadian company and its worldwide subsidiaries as well as the assets, payroll and sales of all such companies. For a Canadian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a state of the United States imposes a costly burden. It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by a treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was recently rejected by the Senate. Canada continues to be concerned about this issue as it affects Canadian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Canada on this subject.

4. I have the honour to propose to you that the present Note and your reply thereto shall constitute an agreement between our two Governments on these matters.

Accept, Sir, the assurances of my highest consideration.

ALLAN J. MACEACHEN,
Deputy Prime Minister and
Minister of Finance of Canada.

SEPTEMBER, 26, 1980.

Hon. ALLAN J. MACEACHEN,
Deputy Prime Minister and Minister of Finance of Canada.

Sir: I have the honor to acknowledge receipt of your Note of September 26, 1980, which reads as follows:

"I have the honour to refer to the Convention between Canada and the United States of America with Respect to Taxes on Income and on Capital, signed today, and to confirm certain understandings reached between the two Governments with respect to the Convention.

1. In French, the term "société" also means a "corporation" within the meaning of Canadian law.

2. The competent authorities of each of the Contracting States shall review the procedures and requirements for an organization of the other Contracting State to establish its status as a religous, scientific, literary, educational or charitable organization entitled to exemption under paragraph 1 of Article XXI (Exempt Organizations), or as an eligible recipient of the charitable contributions or gifts referred to in paragraphs 5 and 6 of Article XXI, with a view to avoiding duplicate application by such organizations to the administering agencies of both Contracting States.

If a Contracting State determines that the other Contracting State maintains procedures to determine such status and rules for qualification that are compatible with such procedures and rules of the first-mentioned Contracting State, it is contemplated that such first-mentioned Contracting State shall accept the certification of the administering agency of the other Contracting State as to such status for the purpose of making the necessary determinations under paragraphs 1, [illegible] and 6 of Article XXI.

It is further agreed that the term "family," as used in paragraphs 5 and 6 of Article XXI, means an individual's brothers and sisters (whether by whole or half-blood, or by adoption), spouse, ancestors, lineal descendants and adopted descendants.

3. It is the position of Canada that the so-called "unitary apportionment" method used by certain states of the United States to allocate income to United States offices or subsidiaries of Canadian companies results in inequitable taxation and imposes excessive administrative burdens on Canadian companies doing business in those states. Under that method the profit of a Canadian company on its United States business is not determined on the basis of arm's-length relations but is derived from a formula taking account of the income of the Canadian company and its world-wide subsidiaries as well as the assets, payroll and sales of all such companies. For a Canadian multinational company with many subsidiaries in different countries to have to submit its books and records for all of these companies to a state of the United States imposes a costly burden. It is understood that the Senate of the United States has not consented to any limitation on the taxing jurisdiction of the states by a treaty and that a provision which would have restricted the use of unitary apportionment in the case of United Kingdom corporations was recently rejected by the Senate. Canada continues to be concerned about this issue as it affects Canadian multinationals. If an acceptable provision on this subject can be devised, the United States agrees to reopen discussions with Canada on this subject.

4. I have the honour to propose to you that the present Note and your reply thereto shall constitute an agreement between our two Governments on these matters."

I confirm these understandings on behalf of the Government of the United States of America. These understandings constitute an agreement between our two Governments on this matter, which will enter into force on the date of entry into force of the Convention between the Government of the United States of America and the Government of Canada with Respect to Taxes on Income and on Capital which was signed today.

Accept, Sir, the renewed assurances of my highest consideration.

J. WILLIAM MILLER.

○

96th Congress 2d Session | SENATE | Executive [illegible]

TAX CONVENTION WITH THE ARAB REPUBLIC OF EGYPT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

[illegible]

[illegible]

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : [illegible]

authorities of the other Contracting State as to such matters for the purpose of making the necessary determinations under paragraphs 2, 3 and 4 of Article XXIX.

It is further agreed that the term "disability" as used in paragraph 3 (a) of Article XXIX [illegible]

[illegible]

[illegible]

[illegible] the Government of the United States of America and the Government of Canada [illegible]

Accept, Sir, the renewed assurances of my highest consideration.

[illegible]

96TH CONGRESS
2d Session

SENATE

EXECUTIVE
U

TAX CONVENTION WITH THE ARAB REPUBLIC OF EGYPT

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT CAIRO ON AUGUST 24, 1980

NOVEMBER 12, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Convention between the Government of the United States of America and the Government of the Arab Republic of Egypt for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, (the Convention) signed at Cairo on August 24, 1980. I transmit also the report of the Department of State with respect to the Convention.

The Convention will replace the income tax convention with Egypt which was signed in 1975. I therefore, desire to withdraw from the Senate the following treaty, removing it from the Treaty Calendar:

Convention between the Government of the United States of America and the Arab Republic of Egypt for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Washington on October 28, 1975 (Executive D, 94th Cong., 2d Sess.).

The Convention is similar to the United States model in major respects although different in form and pattern as the model was published after the negotiations of the convention had begun. As in the model, business profits of a resident of one country may be taxed by the other only if such profits are attributable to a permanent establishment in the other country. Similarly, with respect to independent personal service income, an individual who is a resident of one State may be taxed by the other State only if certain tests are met. In the Convention, the time threshold is shorter than in the United States model, and, with respect to entertainers, the dollar threshold is lower.

Maximum rates of tax are established on a reciprocal basis for the taxation by the source country of dividends, interest, and royalties. In general, these maximum rates in the Convention exceed the rates specified in the United States model. The rates in the Convention are, however, consistent with those established in other United States tax conventions with developing countries.

I recommend that the Senate give early and favorable consideration to the Convention.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
WASHINGTON, D.C., *October 3, 1980.*

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification the Convention between the Government of the United States of America and the Government of the Arab Republic of Egypt for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, (the Convention) signed at Cairo on August 24, 1980.

Income tax conventions with Egypt were signed in 1960 and 1975 but neither entered into force. The 1960 convention was withdrawn in 1964 because a tax sparing provision (an incentive for United States investment in Egypt) was unacceptable to the Senate. When the United States model income tax convention was published in 1976, it became necessary to amend the 1975 convention with Egypt. The Convention is a revised version of the 1975 convention. I recommend that the 1975 income tax convention with Egypt be withdrawn prior to Senate consideration of the new Convention.

Negotiations with Egypt began in 1974, prior to the first publication of the United States model convention in 1976. The form and pattern of the Convention, therefore, are somewhat different from the United States model, but do not differ in major substantive respects from the model, except to reflect Egypt's status as a developing country or particular features of Egyptian law.

As in the model, business profits of a resident of one country may be taxed by the other only if such profits are attributable to a permanent establishment in the other country. Similarly, with respect to independent personal service income, an individual who is a resident of one State may be taxed by the other on income from personal services performed in the other State only if certain tests are met. In the Convention, the time threshold is shorter than in the United States model, and. with respect to entertainers, the dollar threshold is lower.

Maximum rates of tax are established on a reciprocal basis for the taxation by the source country of dividends, interest, and royalties. In general, these maximum rates in the Convention exceed the rates specified in the United States model. The rates in the Convention are, however, consistent with those established in other United States tax conventions with developing countries.

With respect to dividends, the United States withholding rate is, in general, limited to 15 percent, although a lower 5 percent rate is specified for dividends paid to a parent corporation in Egypt. On the Egyptian side, a special rule has been drafted because of several unique features of the Egyptian system of taxation of corporations and their shareholders. Under Egyptian law, dividends paid out of current earnings are fully deductible for purposes of corporate level taxation. The dividends are then subject to a series of withholding taxes equivalent in total rate to the corporate taxes. When the shareholder is a corporation, no further tax is due with respect to that income; individual shareholders, however, are subject to general income tax at progressive rates on their dividend income. Under the Convention, a United States corporation which receives dividends from an Egyptian corporation is not subject to any Egyptian tax beyond the withholding taxes. An individual United States shareholder is subject to the general income tax, but the average rate may not exceed 20 percent; it may, in some cases, be less than 20 percent, depending on the amount of the shareholder's Egyptian taxable income.

Interest is taxable at the source at a maximum rate of 15 percent, except that interest received, guaranteed, or insured by a Contracting State or instrumentality is exempt at source. Royalties are subject to a maximum rate of tax at source of 15 percent. Motion picture royalties, under the Convention, are treated as business profits. They are not subject to withholding tax at the source and may be taxed by the source country, on a net basis, only if they are attributable to a permanent establishment which the recipient has in that country.

The Convention contains the usual rules relating to real property income, capital gains, the treatment of students, pensioners and government employees, nondiscrimination, and administrative cooperation. These rules deviate only in minor respects from the model provisions. With respect to real property income and capital gains, the Convention provides that gain on the sale of shares or an interest in a partnership, estate or trust the assets of which consist principally of real property, may be taxed where the property is situated. Although such a rule does not appear in the current United States model, it has recently become United States policy to include such a provision in United States tax Conventions.

The Convention will enter into force 30 days following the exchange of instruments of ratification and its provisions will apply to withholding taxes on amounts paid or credited on or after the first day of the second month following the entry into force and to other taxes for taxable periods beginning on or after January 1 following the entry into force.

The Convention will remain in force indefinitely unless terminated by one of the Contracting States. It may be terminated by six months' diplomatic notice after five years from its entry into force.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted,

EDMUND S. MUSKIE.

Convention Between the Government of the United States of America and the Government of the Arab Republic of Egypt for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income

The Government of the United States of America and the Government of the Arab Republic of Egypt, desiring to conclude a convention for the avoidance of double taxation of income, the prevention of fiscal evasion with respect to taxes on income, and the elimination of obstacles to international trade and investment;

Have agreed as follows:

ARTICLE 1

Taxes Covered

(1) The taxes which are the subject of this Convention are:

(a) In the case of the United States, the Federal income taxes imposed by the Internal Revenue Code but excluding the accumulated earnings tax and the personal holding company tax, and

(b) In the case of Egypt:

(i) Tax on income derived from immovable property (including the land tax, the building tax, and the ghaffir tax);

(ii) Tax on income from movable capital;

(iii) Tax on commercial and industrial profits;

(iv) Tax on wages, salaries, indemnities, and pensions;

(v) Tax on profits from liberal professions and all other noncommercial professions;

(vi) General income tax;

(vii) Defense tax;

(viii) National security tax;

(ix) War tax; and

(x) Supplementary taxes imposed as a percentage of taxes mentioned above.

(2) This Convention shall also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention.

(3) For the purpose of Article 26 (Nondiscrimination), this Convention shall also apply to taxes of every kind imposed at the national, state, or local level. For the purpose of Article 28 (Exchange of Information), this Convention shall also apply to taxes of every kind imposed at the national level.

(5) The competent authorities of the Contracting States shall notify each other promptly of any amendments of the tax laws referred to in paragraph (1) and of the adoption of any taxes referred to in paragraph (2) by transmitting the texts of any amendments or new statutes.

(5) The competent authorities of the Contracting States shall notify each other promptly of the publication by their respective Contracting States of any material concerning the application of this Convention, whether in the form of regulations, rulings, or judicial decisions, by transmitting the texts of any such materials.

ARTICLE 2

General Definitions

(1) In this Convention, unless the context otherwise requires:

(a) (i) The term "United States" means the United States of America; and

(ii) When used in a geographical sense, the term "United States" means the states thereof and the District of Columbia. Such term also includes:

(A) The territorial sea thereof, and

(B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which the United States exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which the Convention is being applied is connected with such exploration or exploitation.

(b) (i) The term "Egypt" means the Arab Republic of Egypt; and

(ii) When used in a geographical sense the term "Egypt" includes:

(A) The territorial sea thereof, and

(B) The seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Egypt exercises sovereign rights, in accordance with international law, for the purpose of exploration for and exploitation of the natural resources of such area, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation.

(c) The term "Contracting State" means the United States or Egypt, as the context requires.

(d) The term "State" means any national State, whether or not one of the Contracting States.

(e) The term "person" includes an individual, a partnership, a corporation, an estate, or a trust.

(f) (i) The term "United States corporation" means a corporation (or any unincorporated entity treated as a corporation for United States tax purposes) which is created or organized under the laws of the United States or any state thereof or the District of Columbia; and

(ii) The term "Egyptian corporation" means a corporation or any unincorporated entity treated as a corporation for Egyptian

tax purposes which is created or organized under the laws of Egypt.

(g) The term "competent authority" means:

(i) In the case of the United States, the Secretary of the Treasury or his delegate, and

(ii) In the case of Egypt, the Minister of Finance or his delegate.

(h) The term "tax" means tax imposed by the United States or Egypt whichever is applicable, to which this Convention applies by virtue of Article 1 (Taxes Covered).

(i) The term "international traffic" means any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State.

(2) Any other term used in this Convention and not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. Notwithstanding the preceding sentence, if the meaning of such a term under the laws of one of the Contracting States is different from the meaning of the term under the laws of the other Contracting State, or if the meaning of such a term is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or to further any other purpose of this Convention, establish a common meaning of the term for the purposes of this Convention.

ARTICLE 3

Fiscal Residence

(1) In this Convention:

(a) The term "resident of Egypt" means:

(i) An Egyptian corporation, and

(ii) Any other person (except a corporation or an entity treated under Egyptian law as a corporation) resident in Egypt for purposes of Egyptian tax, but in the case of a partnership, estate, or trust only to the extent that the income derived by such partnership, estate, or trust is subject to Egyptian tax as the income of a resident either in the hands of the respective entity or of its partners or beneficiaries.

(b) The term "resident of the United States" means:

(i) A United States corporation, and

(ii) Any other person (except a corporation or any entity treated as a corporation for United States tax purposes) resident in the United States for purposes of United States tax, but in the case of a partnership, estate, or trust only to the extent that the income derived by such partnership, estate, or trust is subject to United States tax as the income of a resident either in the hands of the respective entity or of its partners or beneficiaries.

(2) Where by reason of the provisions of paragraph (1) an indi-

vidual is a resident of both Contracting States, then his residence shall be determined in accordance with the following rules:

(a) He shall be deemed to be a resident of that Contracting State in which he maintains his permanent home. If he has a permanent home in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of that Contracting State with which his personal and economic relations are closest (center of vital interests);

(b) If the Contracting State in which he has his center of vital interests cannot be determined, he shall be deemed to be a resident of that Contracting State in which he has an habitual abode;

(c) If he has an habitual abode in both Contracting States or in neither of the Contracting States, he shall be deemed to be a resident of the Contracting State of which he is a citizen; and

(d) If he is a citizen of both Contracting States or of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 4

Source of Income

For purposes of this Convention:

(1) Dividends shall be treated as income from sources within a Contracting State only if paid by a corporation of that Contracting State. Notwithstanding the preceding sentence, a dividend shall be treated as from sources within—

(a) Egypt if paid by a United States corporation whose activities lie solely or mainly in Egypt and to which paragraph (5) of Article 11 (Dividends) applies.

(b) The United States if paid by a corporation other than a United States corporation if, for the 3-year period ending with the close of such corporation's taxable year preceding the declaration of the dividend (or for such part of that period as such corporation has been in existence), at least 50 percent of such corporation's gross income from all sources was industrial or commercial profits attributable to a permanent establishment which such corporation had in the United States.

(2) Interest shall be treated as income from sources within a Contracting State only if paid by such Contracting State, a political subdivision or a local authority thereof, or by a resident of that Contracting State. Notwithstanding the preceding sentence, if such interest is paid on an indebtedness incurred in connection with a permanent establishment which bears such interest, then such interest shall be deemed to be from sources within the State (whether or not a Contracting State) in which the permanent establishment is situated.

(3) Royalties described in paragraph (2) of Article 13 (Royalties) for the use of, or the right to use, property or rights described in such paragraph shall be treated as income from sources within a Contracting State only to the extent that such royalties are for the use of, or the right to use, such property or rights within that Contracting State.

(4) Income from real property (including royalties), described in Article 7 (Income from Real Property) shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(5) Income from the rental of tangible personal (movable) property shall be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

(6) Income from the purchase and sale or exchange of intangible or tangible personal property (other than gains defined as royalties by paragraph (2) of Article 13 (Royalties)) shall be treated as income from sources within a Contracting State only if such sale or exchange is within that Contracting State.

(7) Income received by an individual for his performance of labor or personal services whether as an employee or in an independent capacity, shall be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of one of the Contracting States in international traffic shall be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 21 (Governmental Functions) and payments described in Article 20 (Social Security Payments) paid from the public funds of a Contracting State or a political subdivision or local authority thereof shall be treated as income from sources within that Contracting State only.

(8) Notwithstanding paragraphs (1) through (6), industrial or commercial profits which are attributable to a permanent establishment which the recipient, a resident of one of the Contracting States, has in the other Contracting State shall be treated as income from sources within that other Contracting State. Industrial or commercial profits attributable to such permanent establishment include any item of income described in paragraphs (1) through (6) to the extent provided in paragraph (6) of Article 8 (Business Profits).

(9) The source of any item of income to which paragraphs (1) through (8) are not applicable shall be determined by each of the Contracting States in accordance with its own law. Notwithstanding the preceding sentence, if the source of any item of income under the laws of one Contracting State is different from the source of such item of income under the laws of the other Contracting State or if the source of such income is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting States may, in order to prevent double taxation or further any other purpose of this Convention, establish a common source of the item of income for purposes of this Convention.

ARTICLE 5

Permanent Establishment

(1) For the purpose of this Convention, the term "permanent establishment" means a fixed placed of business through which a resident of

one of the Contracting States engages in industrial or commercial activity.

(2) The term "permanent establishment" includes but is not limited to:

(a) A seat of management;
(b) A branch;
(c) An office;
(d) A factory;
(e) A workshop;
(f) A mine, quarry, or other place of extraction of natural resources; and
(g) The maintenance of a building site or construction or installation project which exists for more than 6 months.

(3) Notwithstanding paragraphs (1) and (2), a permanent establishment shall not include a fixed place of business used only for one or more of the following:

(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident;

(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

(e) The maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; and

(f) The maintenance of a building site or construction or installation project which does not exist for more than 6 months.

(4) A person acting in one of the Contracting States on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, shall be deemed to give rise to a permanent establishment in the first-mentioned Contracting State if such person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of that resident, unless the exercise of such authority is limited to the purchase of goods or merchandise for that resident.

(5) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in that other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

(6) A resident of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident sells at the termination of a trade fair or convention in such other Contracting State goods or merchandise which such resident displayed at such trade fair or convention.

(7) In determining whether a resident of one Contracting State has a permanent establishment in the other Contracting State there shall not be taken into account the fact that such resident may be related to either a resident of the other Contracting State or to any other person who engages in business in that other Contracting State.

(8) The principles set forth in paragraphs (1) through (7) shall be applied in determining for purposes of this Convention whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States.

ARTICLE 6

General Rules of Taxation

(1) A resident of one of the Contracting States may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to any limitations set forth in this Convention. For this purpose, the rules set forth in Article 4 (Source of Income) shall be applied to determine the source of income.

(2) The provisions of this Convention shall not be construed to restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) By the laws of one of the Contracting States in determination of the tax imposed by that Contracting State, or

(b) By any other agreement between the Contracting States.

(3) Notwithstanding any provisions of this Convention except paragraph (4), a Contracting State may tax its residents (as determined under Article 3 (Fiscal Residence)) and its citizens as if this Convention had not come into effect.

(4) The provisions of paragraph (3) shall not affect:

(a) The benefits conferred by a Contracting State under paragraph 3 of Article 19 (Private Pensions and Annuities) and under Articles 20 (Social Security Payments), 25 (Relief from Double Taxation), 26 (Nondiscrimination), and 27 (Mutual Agreement Procedure); and

(b) The benefits conferred by a Contracting State under Articles 21 (Governmental Functions), 22 (Teachers), 23 (Students and Trainees), and 30 Diplomatic and Consular Officers) upon individuals who are neither citizens of, nor have immigrant status in, that Contracting State.

(5) The competent authorities of the two Contracting States may each prescribe regulations necessary to carry out the provisions of this Convention.

ARTICLE 7

Income From Real Property

(1) Income from real property, including royalties and other payments in respect of the exploitation of natural resources and gains derived from the sale, exchange, or other disposition of such property or of the right giving rise to such royalties or other payments, may be

taxed by the Contracting State in which such real property or natural resources are situated. For purposes of this Convention, interest on indebtedness secured by real property or secured by a right giving rise to royalties or other payments in respect of the exploitation of natural resources shall be regarded as income from real property.

(2) Paragraph (1) shall apply to income derived from the usufruct, direct use, letting, or use in any other form of real property.

(3) For purposes of paragraph (1) of this Article and paragraph (4) of Article 4 (Source of Income), gains from the alienation of shares of a corporation or of an interest in a partnership, estate, or trust, the property of which consists, directly or indirectly, principally of real property situated in a Contracting State, shall be regarded as income from real property.

(4) Income or gain referred to in this Article derived from sources in a Contracting State by a resident of the other Contracting State may be taxed by both Contracting States.

ARTICLE 8

Business Profits

(1) Industrial or commerical profits of a resident of one of the Contracting States shall be exempt from tax by the other Contracting State unless the resident has a permanent establishment in that other Contracting State. If the resident has a permanent establishment in that other Contracting State, tax may be imposed by that other Contracting State on the industrial or commercial profits of the resident but only on so much of them as are attributable to the permanent establishment.

(2) Where a resident of one of the Contracting States has a permanent establishment in the other Contracting State, there shall in each Contracting State be attributed to the permanent establishment the industrial or commercial profits which would reasonably be expected to have been derived by it if it were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment.

(3) In the determination of the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions expenses which are reasonably connected with such profits, including executive and general administrative expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment of a resident of one of the Contracting States in the other Contracting State merely by reason of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of that resident.

(5) The term "industrial or commercial profits" includes, but is not limited to, income derived from manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, the rental of tangible personal (movable) property, and the rental or licensing of motion picture films or films or tapes used for radio or television broadcast-

ing. Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

(6) For purposes of paragraph (1), industrial or commercial profits which are attributable to a permanent establishment include income from dividends, interest, royalties (as defined in paragraph (2) of Article 13 (Royalties)), and capital gains and income derived from property and natural resources, but only if such income is effectively connected with the permanent establishment. To determine whether income is effectively connected with a permanent establishment, the factors taken into account shall include whether the rights or property giving rise to such income are used in or held for use in carrying on an activity giving rise to industrial or commercial profits through such permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of such income. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

(7) Where industrial or commercial profits include items of income which are dealt with separately in other articles of this Convention, the provisions of those articles shall, except as otherwise provided therein, supersede the provisions of this Article.

ARTICLE 9

Shipping and air transport

(1) Notwithstanding Article 8 (Business Profits): Profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

(2) For purposes of this Article, income derived from the operation in international traffic of ships or aircraft does not include dividends received by a person by virtue of an ownership interest in a corporation engaged in the operation of ships or aircraft in international traffic, and includes—

- (a) Income derived from the rental of ships or aircraft operated in international traffic if such rental income is incidental to other income described in paragraph (1); and
- (b) Income derived from the use, maintenance, and lease of—
  - (i) Containers,
  - (ii) Trailers for the inland transport of containers, and
  - (iii) Other related equipment

in connection with the operation by the resident in international traffic of ships or aircraft described in paragraph (1).

(3) The existing exemption of United States air transport enterprises afforded by Decree of the Egyptian Council of Ministers shall cease to have effect upon the entry into force of this Convention.

ARTICLE 10

Related Persons

(1) Where a person subject to the taxing jurisdiction of one of the Contracting States and any other person are related and where such

related persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, any income, deductions, credits, or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income (or loss) of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person.

(2) Where a redetermination has been made by one Contracting State of the income of one of its residents in accordance with paragraph (1), then the other Contracting State shall, if it agrees with such redetermination and if necessary to prevent double taxation, make a corresponding adjustment to the income of a person in such other Contracting State related to such resident. In the event the other Contracting State disagrees with such redetermination, the two Contracting States shall endeavor to reach agreement in accordance with the mutual agreement procedure in paragraph (2) of Article 27 (Mutual Agreement Procedure).

(3) For purposes of this Convention, a person is related to another person if either person owns or controls directly or indirectly the other, or if any third person or persons own or control directly or indirectly both. For this purpose, the term "control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable .

(1) Dividends derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States.

(2) The rate of tax imposed by the United States on dividends paid by a United States corporation to a resident of Egypt shall not exceed—

(a) 15 percent of the gross amount of the dividend; or

(b) When the recipient is a corporation, 5 percent of the gross amount of the dividend if—

(i) During the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least 10 percent of the outstanding shares of the voting stock of the paying corporation was owned by the recipient corporation, and

(ii) Not more than 25 percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, 50 percent or more of the outstanding shares of the voting stock of which is owned by the paying corporation at the time such dividends or interest is received).

(3) Dividends paid by an Egyptian corporation to a resident of the United States shall in Egypt be subject (a) to the tax on income derived from movable capital, the defense tax, national security tax, war tax, the supplementary taxes on the foregoing, and substantially similar taxes enacted after the date of signature of this Convention

(which taxes shall be deducted at source), provided that such dividends, if distributed out of the taxable profits of the same taxable year and not out of accumulated reserves or assets, shall be allowed as a deduction from the amount of the company's taxable income or profits subject to tax as industrial or commercial profits, and (b) when paid to a natural person, to the general income tax levied on net total income. However, the general income tax thus imposed shall in no case exceed an average of 20 percent of the net dividends payable to such natural person. The dividends payable to a United States corporation shall not be subject to any taxes other than those described in subparagraph (a).

(4) Paragraphs (2) and (3) shall not apply if such dividends are treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient, a resident of one Contracting State, has in the other Contracting State. In such case the provisions of Article 8 shall apply.

(5) Dividends paid by a United States corporation whose activities lie solely or mainly in Egypt shall in Egypt be treated in the manner provided by paragraph (3).

(6) Dividends deemed to be paid, according to the provisions of Egyptian taxation law, out of yearly profits by a permanent establishment maintained in Egypt by a United States corporation whose activities extend to countries other than Egypt shall in Egypt be treated in the manner provided by paragraph (3).

(7) The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the corporation making the distribution is a resident.

ARTICLE 12

Interest

(1) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

(2) Interest derived by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of 15 percent of the gross amount of such interest.

(3) Notwithstanding paragraphs (1) and (2), interest beneficially derived by (a) one of the Contracting States, or by an instrumentality of that Contracting State, not subject to tax by that Contracting State on its income, or (b) a resident of such Contracting State with respect to loans made, guaranteed, or insured by that Contracting State or an instrumentality thereof, shall be exempt from tax by the other Contracting State.

(4) Interest paid by a resident of one of the Contracting States to a person other than a resident of the other Contracting State (and in

the case of interest paid by a resident of Egypt to a person other than a citizen of the United States) shall be exempt from tax by the other Contracting State unless such interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 4 (Source of Income).

(5) Paragraphs (2), (3), and (4) shall not apply if the interest is treated, under paragraph (6) of Article 8 (Business Profits) as industrial or commercial profits attributable to a permanent establishment which the recipient, a resident of one Contracting State, has in the other Contracting State. In such a case, the provisions of Article 8 shall apply.

(6) Where an amount is paid to a related person and would be treated as interest but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

(7) The term "interest" as used in this Convention means income from money lent and other income which under the taxation law of the Contracting State in which the income has its source is assimilated to income from money lent, but does not include interest on indebtedness secured by mortgages on real estate or other amounts considered income from real property under Article 7 (Income from Real Property).

ARTICLE 13

Royalties

(1) Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States. However, royalties shall not be taxed by the other Contracting State at a rate in excess of 15 percent of the gross amount of such royalty.

(2) For purposes of this Article the term "royalties" means:

(a) Payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, but not including copyrights of motion picture films or films or tapes used for radio or television broadcasting which are industrial and commercial profits within the meaning of paragraph (5) of Article 8 (Business Profits), and patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights; and

(b) Gains derived from the sale, exchange, or other disposition of any such property or rights to the extent that the amounts realized on such sale, exchange, or other disposition for consideration are contingent on the productivity, use or disposition of such property or rights.

(3) Paragraph (1) shall not apply if the recipient of the royalty, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment and the property or rights giving rise to the royalty is effectively connected with such

permanent establishment. In such a case, the provisions of Article 8 (Business Profits) shall apply.

(4) The provisions of this Article shall not apply to dividends on founders' shares issued in Egypt as consideration for the rights mentioned in paragraph (2) of this Article and which are taxed in accordance with the provisions of Article 1 of Law No. 14 of 1939. In such a case, the provisions of Article 11 (Dividends) shall apply.

(5) Where an amount is paid to a related person and would be treated as a royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

ARTICLE 14

Capital Gains

(1) A resident of one of the Contracting States shall be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets unless—

(a) The gain is derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of property described in Article 7 (Income from Real Property) situated within the other Contracting State,

(b) the gain arises out of a sale, exchange, or other disposition described in paragraph (2)(b) of Article 13 (Royalties),

(c) The gain is treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient has in such other Contracting State, or

(d) The recipient of the gain, being an individual who is a resident of one of the Contracting States is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

(2) In the case of gains described in paragraph (1)(a), the provisions of Article 7 (Income from Real Property) shall apply. In the case of gains described in paragraph (1)(b), the provisions of Article 13 (Royalties) shall apply. In the case of gains described in paragraph (1)(c), the provisions of Article 8 (Business Profits) shall apply.

ARTICLE 15

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an independent capacity may be taxed by that Contracting State. Except as provided in paragraph (2), such income shall be exempt from tax by the other Contracting State.

(2) Income derived by an individual who is a resident of one of the Contracting States from the performance of personal services in an

independent capacity in the other Contracting State may be taxed by that other Contracting State, if the individual is present in that other Contracting State for a period or periods aggregating 90 days or more in the taxable year.

(3) The term "personal services in an independent capacity" includes, but is not limited to, scientific, literary, artistic, educational or teaching activities, as well as independent activities of physicians, lawyers, engineers, architects, dentists, and accountants.

ARTICLE 16

Dependent Personal Services

(1) Except as provided in Articles 21 (Governmental Functions), 22 (Teachers), and 23 (Students and Trainees), wages, salaries, and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State. Except as provided by paragraph (2) and in Articles 19 (Private Pensions and Annuities), 21 (Governmental Functions), 22 (Teachers), and 23 (Students and Trainees), such remuneration derived from sources within the other Contracting State may also be taxed by that other Contracting State.

(2) Remuneration described in paragraph (1) derived by an individual who is a resident of one of the Contracting States shall be exempt from tax by the other Contracting State if—

(a) He is present in that other Contracting State for a period or periods aggregating less than 90 days in the taxable year;

(b) He is an employee of a resident of, or of a permanent establishment maintained in, the first-mentioned Contracting State;

(c) The remuneration is not borne as such by a permanent establishment which the employer has in that other Contracting State; and

(d) The remuneration is subject to tax in the first-mentioned Contracting State.

(3) Notwithstanding paragraphs (1) and (2), remuneration derived by an employee of a resident of one of the Contracting States for labor or personal services performed as a member of the regular complement of a ship or aircraft operated in international traffic by a resident of that Contracting State may be taxed by that Contracting State.

ARTICLE 17

Public Entertainers

Notwithstanding Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), the income derived by an individual who is a resident of one Contracting State from his performance of personal services in the other Contracting State as a public entertainer, such as a theater, motion picture, radio or television artist, a musician, or an athlete, may be taxed by the other Contracting State, but only if the gross amount of such income exceeds 400 United States dollars or its equivalent in Egyptian pounds for each day such person is present in the other Contracting State for the purpose of performing such services therein.

ARTICLE 18

Amounts Received for Furnishing Personal Services of Others

(1) Nothwithstanding the provisions of Article 8 (Business Profits), amounts received by a resident of one of the Contracting States in consideration of furnishing in the other Contracting State the personal services of one or more other persons shall be subject to tax under the taxation laws of each Contracting State to the extent that—

(a) (i) The person for whom the services were furnished designated the person or persons who would render the services, whether or not he had the legal right to do so and whether or not the designation had been made formally;

(ii) The person for whom the services were furnished had the right to designate the person or persons who would render the services; or

(iii) By reason of the facts and circumstances the arrangement for personal services had the effect of designating the person or persons who would render the services; and

(b) The resident of the first-mentioned Contracting State directly or indirectly pays compensation for such services to any person, other than another resident of the first-mentioned Contracting State or of that other Contracting State who is subject to tax on such compensation.

(2) Paragraph (1) shall not apply to any amount received if it is established to the satisfaction of the competent authority of that other Contracting State, with respect to such amount, that neither the creation or organization of the resident of the first-mentioned Contracting State (where such resident is a corporation or other entity), nor the furnishing of the services through such resident has the effect of a substantial reduction of income, war profits, excess profits, or similar taxes.

ARTICLE 19

Private Pensions and Annuities

(1) Except as provided in Article 21 (Governmental Functions), pensions and other similar renumeration paid to an individual in consideration of past employment shall be taxable only in the Contracting State of which he is a resident.

(2) Alimony and annuities paid to an individual who is a resident of one of the Contracting States shall be taxable only in that Contracting State.

(3) Child support payments made by an individual who is a resident of one of the Contracting States to an individual who is a resident of the other Contracting State shall be exempt from tax in that other Contracting State.

(4) The term "pensions and other similar renumeration," as used in this Article, means periodic payments other than social security payments covered in Article 20 (Social Security Payments) made (a) by reason of retirement or death and in consideration for services rendered

or (b) by way of compensation for injuries or sickness received in connection with past employment.

(5) The term "annuities," as used in this Article, means a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

(6) The term "alimony," as used in this Article, means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support which payments are taxable to the recipient under the internal laws of the Contracting State of which he is a resident.

(7) The term "child support payments," as used in this Article, means periodic payments for the support of a minor child made pursuant to written separation agreement or a decree of divorce, separate maintenance, or compulsory support.

ARTICLE 20

Social Security Payments

Social security payments and similar amounts paid by one of the Contracting States to an individual who is a resident of the other Contracting State shall be taxable only in the other Contracting State. This Article shall not apply to payments described in Article 21 (Governmental Functions).

ARTICLE 21

Governmental Functions

(1) Wages, salaries, or similar remuneration, including pensions, annuities, or similar benefits, paid from public funds of one of the Contracting States:

(a) To a citizen of that Contracting State, or

(b) To a citizen of a State other than a Contracting State who comes to the other Contracting State expressly for the purpose of being employed by the first-mentioned Contracting State

for labor or personal services performed as an employee of the national Government of that Contracting State, or any agency thereof, in the discharge of functions of a governmental nature shall be exempt from tax by the other Contracting State.

(2) The provisions of Articles 16 (Dependent Personal Services) and 19 (Private Pensions and Annuities) shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or any agency thereof.

ARTICLE 22

Teachers

(1) Where a resident of one of the Contracting States is invited by the Government of the other Contracting State, a political subdi-

vision, or a local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed 2 years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution and such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution shall be exempt from tax by that other Contracting State for a period not exceeding 2 years from the date of his arrival in that other Contracting State.

(2) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

Students and Trainees

(1) (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of—

(i) Studying at a university or other recognized educational institution in that other Contracting State, or

(ii) Securing training required to qualify him to practice a profession or professional specialty, or

(iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution.

(b) The amounts referred to in subparagraph (a) are—

(i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(ii) The grant, allowance, or award; and

(iii) Income from personal services performed in that other Contracting State in an amount not in excess of 3,000 United States dollars or its equivalent in Egyptian pounds for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of—

(a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned

Contracting State or other than a person related to such resident, or

(b) Studying at a university or other recognized educational institution in that other Contracting State,

shall be exempt from tax by that other Contracting State for a period not exceeding 12 consecutive months with respect to his income from personal services in an aggregate amount not in excess of 7,500 United States dollars or its equivalent in Egyptian pounds.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study, shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Egyptian pounds.

(4) The benefits provided under Article 22 (Teachers) and paragraph (1) of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit, and for such additional period of time as is necessary to complete, as a full-time student, educational requirements as a candidate for a post-graduate or professional degree from a recognized educational institution. The benefits provided under Article 22 (Teachers) shall not be available to an individual if, during the immediately preceding period, such individual enjoyed the benefits of paragraph (1) of this Article.

ARTICLE 24

Investment or Holding Companies

A corporation of one of the Contracting States deriving dividends, interest, royalties, or capital gains from sources within the other Contracting State shall not be entitled to the benefits of Articles 11 (Dividends), 12 (Interest), 13 (Royalties), or 14 (Capital Gains) if—

(a) By reason of special measures the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties, or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits, and

(b) 25 percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned, directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of an Egyptian corporation, who are citizens of the United States).

ARTICLE 25

Relief From Double Taxation

Double taxation of income shall be avoided in the following manner:

(1) In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a citizen or resident of the United States as a credit against the United States tax the appropriate amount of taxes paid or accrued to Egypt and, in the case of a United States corporation owning at least 10 percent of the voting stock of an Egyptian corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid or accrued to Egypt by the Egyptian corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to Egypt, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within Egypt or on income from sources outside of the United States) provided by United States law for the taxable year. For the purpose of applying the United States credit in relation to taxes paid or accrued to Egypt, the rules set forth in Article 4 (Source of Income) shall be applied to determine the source of income. For purposes of applying the United States credit in relation to taxes paid or accrued to Egypt, the taxes referred to in paragraphs (1)(b) and (2) of Article 1 (Taxes Covered) shall be considered to be income taxes.

(2) Egypt shall allow to a citizen or resident of Egypt as a credit against Egyptian tax the appropriate amount of income taxes paid or accrued to the United States and, in the case of an Egyptian corporation owning at least 10 percent of the voting stock of a United States corporation from which it receives dividends in any taxable year, shall allow credit for the appropriate amount of taxes paid or accrued to the United States by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid or accrued to the United States but shall not exceed that portion of Egyptian tax which such citizen's or resident's net income from sources within the United States bears to his entire net income for the same taxable year. For purpose of applying the Egyptian credit in relation to taxes paid or accrued to the United States, the rules set forth in Article 4 (Source of Income) shall be applied to determine the source of income.

ARTICLE 26

Nondiscrimination

(1) A citizen of one of the Contracting States who is a resident of the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof.

(2) A permanent establishment which a resident of one of the Con-

tracting States has in the other Contracting State shall not be subject in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities. This paragraph shall not be construed as—

(a) Obliging a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for taxation purposes on account of civil status or family responsibilities which it grants to its own individual residents;

(b) Obliging Egypt to grant United States corporations the exemptions granted to Egyptian corporations by Articles 5 and 6 of Law 14 of 1939; or

(c) Affecting the application in Egypt of the first and second paragraphs of Article 11 and Article 11 bis of Law 14 of 1939.

(3) A corporation of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected with taxation which is other or more burdensome than the taxation and requirements to which a corporation of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly owned or controlled by one or more residents of the first-mentioned Contracting State, is or may be subjected.

ARTICLE 27

Mutual Agreement Procedure

(1) Where a resident or citizen of one of the Contracting States considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. Should the resident's or citizen's claim be considered to have merit by the competent authority of the Contracting State to which the claim is made, it shall endeavor to come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with the provisions of this Convention.

(2) The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of this Convention. In particular, the competent authorities of the Contracting States may agree—

(a) To the same attribution of industrial or commercial profits to a resident of one of the Contracting States and its permanent establishment situated in the other Contracting State;

(b) To the same allocation of income, deductions, credits, or allowances between a resident of one of the Contracting States and any related person and to the readjustment of taxes imposed by each Contracting State to reflect such allocation;

(c) To the same determination of the source of particular items of income; or

(d) To the same characterization of particular items of income.

(3) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of this Article. When it seems advisable for the purpose of reaching agreement, the competent authorities may meet together for an oral exchange of opinions.

(4) In the event that the competent authorities reach such an agreement, taxes shall be imposed on such income, and refund or credit of taxes shall be allowed, by the Contracting States in accordance with such agreement, notwithstanding any procedural rule (including statutes of limitations) applicable under the law of either Contracting State.

ARTICLE 28

Exchange of information

(1) The competent authorities shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions concerning taxes to which this Convention applies provided the information is of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(2) Any information so exchanged shall be treated as secret, except that such information may be—

(a) Disclosed to any person concerned with, or

(b) Made part of a public record with respect to,

the assessment, collection, or enforcement of, or litigation with respect to, the taxes to which this Convention applies.

(3) No information shall be exchanged which would be contrary to public policy.

(4) If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

(5) Depositions and evidence which may be furnished in accordance with this article shall not be withheld by reason of any doctrine of law under which international judicial assistance is not accorded in tax matters.

(6) The exchange of information shall be carried out promptly either on a routine basis or on request with reference to particular cases. The competent authorities of the Contracting States may agree on the list of information which shall be furnished on a routine basis.

ARTICLE 29

Assistance in Collection

(1) Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such taxes imposed by that

other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by that other Contracting State shall not be enjoyed by persons not entitled to such benefits.

(2) In no case shall this Article be construed so as to impose upon a Contracting State the obligations to carry out measures at variance with the laws or administrative practices of either Contracting State with respect to the collection of its own taxes.

ARTICLE 30

Diplomatic and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 31

Entry into Force

This Convention shall be subject to ratification in accordance with the constitutional procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible. It shall enter into force 30 days after the date of exchange of instruments of ratification and shall then have effect for the first time:

(a) As respects the rate of withholding tax, to amounts paid on or after the first day of the second month following the date on which this Convention enters into force.

(b) As respects other taxes, to taxable years beginning on or after January 1 of the year following the date on which this Convention enters into force.

ARTICLE 32

Termination

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have force and effect as respects income of calendar years or taxable years beginning (or, in the case of taxes payable at the source, payments made) on or after January 1 next following the expiration of the 6-month period.

(2) Notwithstanding the provisions of paragraph (1), and upon prior notice to be given through diplomatic channels, the provisions of this Convention exempting social security payments from taxation in the Contracting State which makes the payments may be terminated by either Contracting State at any time after this Convention enters into force.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Convention.

DONE at Cairo, Egypt, in duplicate, this 24th day of August, 1980.

ALFRED L. ATHERTON, Jr.,
American Ambassador.
ABDEL RAZZAK ABDEL MEGUID,
Deputy Prime Minister,
Arab Republic of Egypt.

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best copy available

96th Congress } SENATE { Executive
2d Session } { V

CONVENTION ON THE RECOGNITION OF STUDIES, DIPLOMAS, AND DEGREES CONCERNING HIGHER EDUCATION IN THE STATES BELONGING TO THE EUROPE REGION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE RECOGNITION OF STUDIES, DIPLOMAS, AND DEGREES CONCERNING HIGHER EDUCATION IN THE STATES BELONGING TO THE EUROPE REGION, SIGNED ON BEHALF OF THE UNITED STATES ON DECEMBER 21, 1979, AND WHICH WAS ADOPTED AT PARIS, FRANCE, ON DECEMBER 21, 1979, BY THE INTERNATIONAL CONFERENCE OF STATES FOR THE ADOPTION OF THE CONVENTION CONVENED BY THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO)

November 13, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
79-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 13, 1980.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a copy of the Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region.

This instrument was adopted on December 21, 1979 by the International Conference of States for Adoption of the Convention convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and signed on behalf of the United States on December 21, 1979. I also transmit, for the information of the Senate, the report of the Department of State on the Convention.

The Convention is open for signature and ratification only by States of UNESCO's Europe Region (which includes the United States), as well as the Holy See. Other States which are members of the United Nations, of one of its Specialized Agencies or of the International Atomic Energy Agency, or which are Parties to the Statute of the International Court of Justice may be authorized to accede to the Convention by a two-thirds vote of an *ad hoc* committee comprised of at least twenty Contracting States from the Europe Region of UNESCO.

The United States participated actively and effectively in the negotiation of this Convention to ensure that its provisions are compatible with the Constitution, laws, and policies of the United States and do not infringe on the powers and responsibilities of local governmental and nongovernmental educational or professional authorities. Thus, while promoting the objectives of the Final Act of the Helsinki Conference to facilitate the recognition of academic credentials and to improve the mobility of students, teachers and scholars, the Convention acknowledges the pluralistic, decentralized and frequently nongovernmental nature of the decision-making process pertaining to education and entry into the practice of professions in the United States. The Convention establishes an implementation mechanism to achieve international and domestic cooperation and coordination in carrying out its terms.

The report of the Department of State summarizes the Convention's provisions and concludes that no reservations, understandings or declarations are necessary.

By giving its advice and consent to ratification of this Convention, the Senate will advance the cause of higher education within and among the States Parties to the Convention. I recommend that the Senate give prompt consideration to the Convention and advise and consent to its ratification.

JIMMY CARTER.

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 12, 1980.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a copy of the Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region.

This instrument was adopted on December 21, 1979 by the International Conference of States for Adoption of the Convention convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO), and signed on behalf of the United States on December 21, 1979. I also transmit, for the information of the Senate, the report of the Department of State on the Convention.

The Convention is open for signature and ratification only by States of UNESCO's Europe Region (which includes the United States), as well as the Holy See. Other States which are members of the United Nations, of one of its Specialized Agencies or of the International Atomic Energy Agency, or which are Parties to the Statute of the International Court of Justice may be authorized to accede to the Convention by a two-thirds vote of the committee comprised of at least five Contracting States from the Europe Region of UNESCO.

The United States participated actively and effectively in the negotiations of the Convention to ensure that its provisions are compatible with the Constitution, laws and policies of the United States and do not infringe on the powers and responsibilities of local governmental and nongovernmental educational or professional authorities. Thus, while promoting the objectives of the Final Act of the Helsinki Conference to facilitate the recognition of academic credentials and to improve the mobility of students, teachers and scholars, the Convention acknowledges the pluralistic, decentralized and frequently nongovernmental nature of the decision making process pertaining to education and entry into the practice of professions in the United States. The Convention establishes an implementation mechanism to enhance international and domestic cooperation and coordination in carrying out its terms.

The report of the Department of State summarizes the Convention's provisions and concludes that no reservations, understandings or declarations are necessary.

By giving its advice and consent to ratification of this Convention, the Senate will advance the cause of higher education within and among the States Parties to the Convention. I recommend that the Senate give prompt consideration to the Convention and advise and consent to its ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, September 30, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region, signed on behalf of the United States by Ambassador Barbara W. Newell on December 21, 1979. The Convention was adopted at Paris, France on December 21, 1979 by the International Conference of States for the Adoption of the Convention convened by the United Nations Educational, Scientific and Cultural Organization (UNESCO). Entry into force of the Convention requires five ratifications.

The States of the Europe Region (which includes the United States) invited to take part in the diplomatic conference which drafted the Convention, as well as the Holy See, may ratify the Convention. In addition, other States which are members of the United Nations, one of the Specialized Agencies or the International Atomic Energy Agency, or which are Parties to the Statute of the International Court of Justice, may be authorized to accede to the Convention by a two-thirds vote of an *ad hoc* committee comprised of at least twenty Contracting States from the Europe Region of UNESCO. Instruments of ratification are to be deposited with the Director-General of UNESCO.

The Convention is designed to facilitate the mobility of students, scholars and professionals by promoting the recognition of foreign studies, diplomas and degrees by States Parties. It is the most recent in a series of agreements sponsored by UNESCO for each region of the world. Agreements have already been adopted for the Latin American, Arab and Mediterranean regions and are under negotiation for the Asian/Oceanean and African regions. Ultimately, UNESCO hopes to develop a single world-wide Convention.

The Convention will also help to implement one part of the Final Act of the Conference on Security and Cooperation in Europe signed at Helsinki on August 1, 1975. That Final Act expressed the intention of the participating States "to improve access, under mutually acceptable conditions, for students, teachers and scholars of participating States to each other's educational, cultural and scientific institutions . . . in particular by . . . arriving at the mutual recognition of academic degrees and diplomas either through governmental agreements, where necessary, or direct arrangements between universities and other institutions of higher learning and research," and also by "promoting a more exact assessment of the problems of comparison and equivalence of academic degrees and diplomas."

The most complex problem facing the United States negotiators of this Convention was to ensure that the Convention was clearly consistent with our federal political structure and its attendant, pluralistic, decentralized, and often nongovernmental character of decision-making and standard-setting pertaining to post-secondary education and entry into the practice of a profession which exists in the United States. This was accomplished, and the Convention's provisions are consistent with existing laws, policies, and practices in this country. Accordingly, no reservations, understandings or declarations at the time of ratification are considered necessary. The Department of Education, the Department of Health and Human Services, and the International Communication Agency share this view and concur in the transmission of this Convention to the Senate for advice and consent to ratification.

The following is an analysis of the provisions of the Convention:

The Convention consists of a preamble and eight sections embracing 21 articles.

The preamble is largely hortatory, referencing the Helsinki Final Act, UNESCO resolutions on the subject, and the UNESCO objective of preparing a similar convention for all countries.

Section I (Definitions) consists of Article 1 and, *inter alia*, defines the term "recognition" as used in the Convention, making clear that recognition of a foreign educational credential for any purpose depends upon an assessment of its comparability with domestic certificates, diplomas, or degrees. Although Article 1(1)(a) states that recognition of a foreign certificate, diploma or degree for purposes of admission to institutions of higher learning shall enable the holder to be considered for admission "as if he were the holder of a comparable certificate, diploma or degree issued in the Contracting State concerned", this provision also declares that such recognition shall not exempt an applicant from any other admission requirements of the particular institution(s) involved. Article 1(1)(b) makes clear that recognition of a foreign certificate, diploma or degree with a view to the practice of a profession is without prejudice to the legal and professional rules or procedures in force in the State Party concerned and does not exempt the individual involved from complying with "any other conditions for the practice of the profession concerned which may be laid down by the competent governmental or professional authorities."

Accordingly, nothing in the Convention will affect the authority of United States institutions of higher learning to establish their own admission standards or the authority of domestic licensing, certification, or accreditation bodies regarding the entry into the practice of a profession. For example, the Convention does not in any way undermine current or future standards for the educational preparation, credentialling, or practice of health professionals.

Recognition of a foreign educational credential, therefore, involves no more than its acceptance as valid evidence of completion of a course of study which is relevant to an academic or professional pursuit. In the majority of cases, the degree of relevance to such pursuits will be evaluated by competent educational or professional authorities that are completely independent from the federal government.

Section II (Aims) consists of Article 2, which sets out the goals of the Contracting States. While quite lengthy, Article 2 is a statement of intent and a declaration by the Contracting States that they will cooperate in facilitating access to and use of educational and research institutions, mobility of scholars, and cooperation in the field of education.

Section III (Undertakings for Immediate Application) consists of five Articles and constitutes the heart of the Convention. Under Article 3, States Parties will take all feasible steps to encourage the competent authorities concerned to give recognition to foreign secondary school diplomas for admission into institutions of higher education, subject to an assessment of comparability by such authorities [pursuant to Article 1(1)] and to other admission requirements [as noted in Article 1(1)(a)]. Article 4 imposes the same obligation on States Parties with respect to recognition of foreign university degrees for admission to graduate level education, again subject to other admission requirements. In like manner, Article 5 utilizes the same language regarding recognition of foreign degrees for the purpose of practicing a profession, subject to existing legal and professional rules or procedures [as stated in Article 1(1)(b)]. Article 6 requires a Contracting State to transmit the text of the Convention to institutions in its territory not controlled by that State and endeavor to have those institutions accept the principles of the Convention. Article 7 prohibits discrimination in the application of the Convention based on nationality or politically or legal status.

Section IV (Machinery for Application) consists of three articles which provide mechanisms for implementing the Convention. The most significant feature of this section is the creation of a Regional Committee with a UNESCO Secretariat to receive and examine periodic reports. Participation in the Committee is open to all parties and to *all* States of the Europe Region, whether or not they are Parties to the Convention.

Section V (Documentation) provides that States Parties shall exchange information and documentation concerning studies, certificates, diplomas, and degrees in higher education.

Section VI (Cooperation with International Organizations) provides that the Regional Committee will combine its efforts with competent international governmental and nongovernmental organizations.

Section VII (Institutions of Higher Education under the Authority of a Contracting State but situated outside its Territory). This section makes the Convention applicable to studies pursued at and to certificates, diplomas, and degrees received from institutions of States Parties, even if those institutions are situated outside the territory of the State.

Section VIII (Ratification, Accession and Entry into Force). The final seven articles deal with such technical matters as which States may sign the Convention, which States may accede to it, when the Convention comes into force, denunciation procedures, and registration of the Convention with the United Nations.

The Convention on the Recognition of Studies, Diplomas and Degrees Concerning Higher Education in the States Belonging to the Europe Region is a significant advance in the field of international education and in the implementation of the Helsinki Final Act. I am hopeful that the Senate will consider the Convention at an early date and give its advice and consent to ratification.

Respectfully submitted.

WARREN CHRISTOPHER.

(United Nations Educational, Scientific and Cultural Organization)

CONVENTION ON THE RECOGNITION OF STUDIES, DIPLOMAS AND DEGREES CONCERNING HIGHER EDUCATION IN THE STATES BELONGING TO THE EUROPE REGION

PREAMBLE

The States of the Europe Region, Parties to this Convention,

Recalling that, as the General Conference of Unesco has noted on several occasions in its resolutions concerning European co-operation, "the development of co-operation between nations in the fields of education, science, culture and communication, in accordance with the principles set out in Unesco's Constitution, plays an essential role in the promotion of peace and international understanding",

Conscious of the close relationship that exists between their cultures, despite their diversity of languages and the differences in economic and social systems, and desiring to strengthen their co-operation in the field of education and training in the interests of the well-being and lasting prosperity of their peoples,

Recalling that the States meeting in Helsinki expressed, in the Final Act of the Conference on Security and Co-operation in Europe (1 August 1975), their intention "to improve access, under mutually acceptable conditions, for students, teachers and scholars of the participating States to each other's educational, cultural and scientific institutions . . . in particular by . . . arriving at the mutual recognition of academic degrees and diplomas either through governmental agreements, where necessary, or direct arrangements between universities and other institutions of higher learning and research", and also by "promoting a more exact assessment of the problems of comparison and equivalence of academic degrees and diplomas",

Recalling that, with a view to promoting the attainment of these objectives, most of the Contracting States have already concluded bilateral or subregional agreements among themselves concerning the equivalence or recognition of diplomas; but desiring, while pursuing and intensifying their efforts at the bilateral and subregional levels, to extend their co-operation in this field to the whole Europe Region,

Convinced that the great diversity of higher education systems in the Europe Region constitutes an exceptionally rich cultural asset which should be preserved, and desiring to enable all their peoples to benefit fully from this rich cultural asset by facilitating access by the inhabitants of each Contracting State to the educational resources of the other contracting States, more especially by authorizing them to continue their education in higher educational institutions in those other States,

Considering that, to authorize admission to further stages of study, the concept of the recognition of studies should be employed, a concept which in a context of social and international mobility, makes it possible to evaluate the level of education reached bearing in mind knowledge acquired, as attested by diplomas and degrees obtained and also the individual's other relevant qualifications, so far as these may be deemed acceptable by competent authorities,

Considering that the recognition by all the Contracting States of studies, certificates, diplomas and degrees obtained in any one of them is intended to develop the international mobility of persons and the exchange of ideas, knowledge and scientific and technological experience, and that it would be desirable to accept foreign students into establishments of higher education on the understanding that recognition of their studies or diplomas shall at no time confer on them greater rights than those enjoyed by national students,

Noting that this recognition constitutes one of the conditions necessary for:

1. Enabling means of education existing in their territories to be used as effectively as possible,
2. Ensuring that teachers, students, research workers and professional workers have greater mobility,
3. Alleviating the difficulties encountered on their return by persons who have been trained or educated abroad,

Desiring to ensure that studies, certificates, diplomas and degrees are recognized as widely as possible, taking into account the principles of the promotion of lifelong education, the democratization of education, and the adoption and application of an education policy allowing for structural, economic, technological and social changes and suited to the cultural context of each country,

Determined to sanction and organize their future collaboration in these matters by means of a convention which will be the starting point for concerted dynamic action taken in particular by means of national, bilateral, subregional and multilateral machinery already existing or that may be deemed necessary,

Mindful that the ultimate objective set by the General Conference of the United Nations Educational, Scientific and Cultural Organization consists in "preparing an International Convention on the Recognition and the Validity of Degrees, Diplomas and Certificates issued by establishments of Higher Learning and Research in all Countries",

Have agreed as follows:

I. DEFINITIONS

Article 1

1. For the purpose of this Convention, the "recognition" of a foreign certificate, diploma or degree of higher education means its acceptance as a valid credential by the competent authorities in a Contracting State and the granting to its holder of rights enjoyed by persons who possess a national certificate, diploma or degree with which the foreign one is assessed as comparable.

Recognition is further defined as follows:

(a) Recognition of a certificate, diploma or degree with a view to undertaking or pursuing studies at the higher level shall enable the holder to be considered for entry to the higher educational and research institutions of any Contracting State as if he were the holder of a comparable certificate, diploma or degree issued in the Contracting State concerned. Such recognition does not exempt the holder of the foreign certificate, diploma or degree from complying with the conditions (other than those relating to the holding of a diploma) which may be required for admission to the higher educational or research institution concerned of the receiving State.

(b) Recognition of a foreign certificate, diploma or degree with a view to the practice of a profession is recognition of the professional preparation of the holder for the practice of the profession concerned, without prejudice, however, to the legal and professional rules or procedures in force in the Contracting States concerned. Such recognition does not exempt the holder of the foreign certificate, diploma or degree from complying with any other conditions for the practice of the profession concerned which may be laid down by the competent governmental or professional authorities.

(c) Recognition of a certificate, diploma or degree should not, however, entitle the holder to more rights in another Contracting State than he would enjoy in the country in which the certificate, diploma or degree was awarded.

2. For the purposes of this Convention, "partial studies" means periods of study or training which while not constituting a complete course are such that they add significantly to the acquisition of knowledge or skills.

II. AIMS

Article 2

1. The Contracting States intend to contribute through their joint action both to the promotion of the active co-operation of all the countries of the Europe Region in the cause of peace and international understanding, and to the development of more effective collaboration with other Member States of Unesco with regard to a better use of their educational, technological and scientific potential.

2. The Contracting States solemnly declare their firm resolve to co-operate closely within the framework of their legislation and constitutional structures, as well as within the framework of existing intergovernmental agreements, with a view to:

(a) Enabling, in the interest of the Contracting States, and consistent with their general policy for educational provision and administrative procedures, the best use of their available education and research resources, and for this purpose:

(i) to make their higher educational institutions as widely accessible as possible to students or researchers from any of the Contracting States;

(ii) to recognize the studies, certificates, diplomas and degrees of such persons;

(iii) to examine the possibility of elaborating and adopting similar terminology and evaluation criteria which would facilitate the application of a system which will ensure the comparability of credits, subjects of study and certificates, diplomas and degrees;

(iv) to adopt a dynamic approach in matters of admission to further stages of study, bearing in mind knowledge acquired, as attested by certificates, diplomas and degrees, and also the individual's other relevant qualifications, so far as these may be deemed acceptable by competent authorities;

(v) to adopt flexible criteria for the evaluation of partial studies, based on the educational level reached and on the content of the courses taken, bearing in mind the interdisciplinary character of knowledge at the higher educational level;

(vi) to improve the system for the exchange of information regarding the recognition of studies, certificates, diplomas and degrees;

(b) Constantly improving curricula in the Contracting States and methods of planning and promoting higher education, on the basis of not only the requirements for economic, social and cultural development, the policies of each country and also the objectives that are set out in the recommendations made by the competent organs of the United Nations Educational, Scientific and Cultural Organization concerning the continuous improvement of the quality of education, the promotion of lifelong education and the democratization of education, but also the aims of the full development of the human personality and of understanding, tolerance and friendship among nations and in general all aims concerning human rights assigned to education by the Universal Declaration of Human Rights and the United Nations International Covenants on Human Rights and the Unesco Convention Against Discrimination in Education.

(c) Promoting regional and world-wide co-operation for the solution of the "problems of comparison and equivalence between academic degrees and diplomas" . . . as well as for recognition of studies and academic diplomas.

3. The Contracting States agree to take all feasible steps at the national, bilateral and multilateral levels, in particular by means of bilateral, subregional, regional or other agreements, arrangements between universities or other higher educational institutions and arrangements with the competent national or international organizations and other bodies, with a view to the progressive attainment by the competent authorities concerned of the goals defined in the present article.

III. UNDERTAKINGS FOR IMMEDIATE APPLICATION

Article 3

1. The Contracting States in addition to any obligations of governments agree to take all feasible steps with a view to encouraging the competent authorities concerned to give recognition, as defined in Article 1, paragraph 1 to secondary school leaving certificates and other diplomas issued in the other Contracting States that grant access to higher education with a view to enabling the holders to undertake studies in institutions of higher education situated in the respective territories of the Contracting States.

2. Without prejudice to the provisions of Article 1, paragraph 1(a), however, admission to a given higher educational institution may also be dependent upon the availability of places and the qualifications concerning linguistic knowledge required in order profitably to undertake the studies in question.

Article 4

1. The Contracting States, in addition to any obligations of governments, agree to take all feasible steps with a view to encouraging the competent authorities concerned to:

(a) give recognition as defined in Article 1, paragraph 1 to certificates, diplomas and degrees with a view to enabling the holders to pursue advanced studies and training and undertake research in their institutions of higher education;

(b) define, so far as possible, the procedure, applicable to the recognition, for the purpose of the pursuit of studies, of the partial studies pursued in higher educational institutions situated in the other Contracting States.

2. The provisions of Article 3, paragraph 2 above shall apply to the cases covered by this article.

Article 5

The Contracting States, in addition to any obligations of governments, agree to take all feasible steps with a view to encouraging the competent authorities concerned to give recognition to the certificates, diplomas or degrees issued by the competent authorities of the other Contracting States for the purpose of practising a profession within the meaning of Article 1, paragraph 1(b).

Article 6

Where admission to educational institutions in the territory of a Contracting State is outside the control of that State, it shall transmit the text of the Convention to the institutions concerned and use its best endeavours to obtain the acceptance by the latter of the principles stated in Sections II and III of the Convention.

Article 7

1. Considering that recognition refers to the studies followed and the certificates, diplomas or degrees obtained from institutions approved by the competent authorities concerned in the Contracting State in which the certificates, diplomas, or degrees were obtained, any person, of whatever nationality or political or legal status, who has followed such studies and obtained such certificates, diplomas or degrees shall be eligible for consideration to benefit from the provisions of Articles 3, 4 and 5.

2. Any national of a Contracting State who has obtained in the territory of a non-Contracting State one or more certificates, diplomas or degrees comparable to those defined in Articles 3, 4 and 5 may avail himself of those provisions which are applicable, on condition that his certificates, diplomas or degrees have been recognized in his home country and in the country in which he wishes to continue his studies.

IV. MACHINERY FOR IMPLEMENTATION

Article 8

The Contracting States shall undertake to work for the attainment of the objectives defined in Article 2 and shall make their best efforts to ensure that the undertakings set forth in Articles 3, 4, 5 and 6 above are put into effect by means of:

(a) national bodies;
(b) the Regional Committee defined in Article 10;
(c) bilateral or subregional bodies.

Article 9

1. The Contracting States recognize that the attainment of the goals and the execution of the undertakings defined in this Convention will

require, at the national level, close co-operation and co-ordination of the efforts of a great variety of national authorities, whether governmental or non-governmental, particularly universities, validating bodies and other educational institutions. They therefore agree to entrust the study of the problems involved in the application of this Convention to appropriate national bodies, with which all the sectors concerned will be associated and which will be empowered to propose appropriate solutions. The Contracting States will furthermore take all feasible measures required to speed up the effective functioning of these national bodies.

2. The Contracting States shall co-operate with the competent authorities of another Contracting State especially by enabling them to collect all information of use to them in their activities relating to studies, diplomas and degrees in higher education.

3. Every national body shall have at its disposal the necessary means to enable it either to collect, process and file all information of use to it in its activities relating to studies, diplomas and degrees in higher education, or to obtain the information it requires in this connection at short notice from a separate national documentation centre.

Article 10

1. A regional committee composed of representatives of the governments of the Contracting States is hereby set up. Its Secretariat is entrusted to the Director-General of the United Nations Educational, Scientific and Cultural Organization.

2. Non-Contracting States of the Europe Region which have been invited to take part in the diplomatic conference entrusted with the adoption of this Convention shall be able to participate in the meetings of the Regional Committee.

3. The function of the Regional Committee shall be to promote the application of this Convention. It shall receive and examine the periodic reports which the Contracting States shall communicate to it on the progress made and the obstacles encountered by them in the application of the Convention and also the studies carried out by its Secretariat on the said Convention. The Contracting States undertake to submit a report to the Committee at least once every two years.

4. The Regional Committee shall, where appropriate, address to the Contracting States recommendations of a general or individual character concerning the application of this Convention.

Article 11

1. The Regional Committee shall elect its Chairman for each session and adopt its Rules of Procedure. It shall meet in ordinary session at least every two years. The Committee shall meet for the first time three months after the sixth instrument of ratification or accession has been deposited.

2. The Secretariat of the Regional Committee shall prepare the agenda for the meetings of the Committee in accordance with the instructions it receives from the Committee and the provisions of the Rules of Procedure. It shall help national bodies to obtain the information needed by them in their activities.

V. DOCUMENTATION

Article 12

1. The Contracting States shall engage in exchanges of information and documentation pertaining to studies, certificates, diplomas and degrees in higher education.

2. They shall endeavour to promote the development of methods and machinery for collecting, processing, classifying and disseminating all the necessary information pertaining to the recognition of studies, certificates, diplomas and degrees in higher education, taking into account existing methods and machinery as well as information collected by national, regional, subregional and international bodies, in particular the United Nations Education, Scientific and Cultural Organization.

VI. COOPERATION WITH INTERNATIONAL ORGANIZATIONS

Article 13

The Regional Committee shall make all the appropriate arrangements for associating with its efforts, for the purpose of ensuring that this Convention is applied as fully as possible, the competent international governmental and non-governmental organizations. This applies particularly to the intergovernmental institutions and agencies vested with responsibility for the application of subregional conventions or agreements concerning the recognition of diplomas and degrees in the States belonging to the Europe Region.

VII. INSTITUTIONS OF HIGHER EDUCATION UNDER THE AUTHORITY OF A CONTRACTING STATE BUT SITUATED OUTSIDE ITS TERRITORY

Article 14

The provisions of this Convention shall apply to studies pursued at, and to certificates, diplomas and degrees obtained from, any institution of higher education under the authority of a Contracting State, even when this institution is situated outside its territory, provided that the competent authorities in the Contracting State in which the institution is situated have no objections.

VIII. RATIFICATION, ACCESSION AND ENTRY INTO FORCE

Article 15

This Convention shall be open for signature and ratification by the States of the Europe Region which have been invited to take part in the diplomatic conference entrusted with the adoption of this Convention as well as by the Holy See.

Article 16

1. Other States which are members of the United Nations, of one of the Specialized Agencies or of the International Atomic Energy Agency or which are Parties to the Statute of the International Court of Justice may be authorized to accede to this Convention.

2. Any request to this effect shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural

Organization who shall transmit it to the Contracting States at least three months before the meeting of the *ad hoc* committee referred to in paragraph 3 of this article.

3. The Contracting States shall meet as an *ad hoc* committee comprising one representative for each Contracting State, with an express mandate from his government to consider such a request. In such cases, the decision of the committee shall require a two-thirds majority of the Contracting States.

4. This procedure shall apply only when the Convention has been ratified by at least 20 of the States referred to in Article 15.

Article 17

Ratification of this Convention or accession to it shall be effected by depositing an instrument of ratification or accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 18

This Convention shall enter into force one month after the fifth instrument of ratification has been deposited, but solely with respect to the States which have deposited their instruments of ratification. It shall enter into force for each other State one month after that State has deposited its instrument of ratification or accession.

Article 19

1. The Contracting States shall have the right to denounce this Convention.

2. The denunciation shall be signified by an instrument in writing deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the instrument of denunication has been received. However, persons having benefited from the provisions of this Convention who may be pursuing studies in the territory of the State denouncing the Convention will be able to complete the course of studies they have begun.

Article 20

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the Contracting States and the other States mentioned in Articles 15 and 16 and also the United Nations of the deposit of all the instruments of ratification or accession referred to in Article 17 and the denunciations provided for in Article 19 of this Convention.

Article 21

In conformity with Article 102 of the United Nations Charter, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

In witness whereof the undersigned representatives, being duly authorized, have signed this Convention.

Done at Paris, this 21st day of December 1979, in the English, French, Russian and Spanish languages, the four texts being equally authoritative, in a single copy which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization. A certified copy shall be sent to all the States referred to in Articles 15 and 16 and to the United Nations.

Dr. Karl Hiller
21/12/79
with attached reservation.

For the Federal Republic of Germany

For the Republic of Austria

21/12/1979.

21/12-1979.

For the Byelorussian Soviet Socialist Republic

21 12.79.

For the People's Republic of Bulgaria

For the Republic of Cyprus

Annelise Hauch 21/12-1979

For Denmark

For Spain

21/12 1979

For the United States of America

Barbara W Newell 21/12/79

For the Republic of Finland

Eero Kekomäki 21.12.1979

For the French Republic

21.12.1979

For the Hellenic Republic

21.12.1979
avec déclaration jointe.

Knopp András
1979 XII. 21.

For the Hungarian People's Republic

For Ireland

For Iceland

David Rahman 21. Dec. 1979

For Israel

For the Italian Republic

For the Grand Duchy of Luxembourg

21. 12. 1979

For the Republic of Malta

For the Principality of Monaco

21. 12. 1979

For Norway

For the Kingdom of the Netherlands

For the Polish People's Republic

21 XII. 1979

21 DEZ 79

For the German Democratic Republic

21. 12. 79 with reservation annexed

For the Socialist Republic of Romania

21. XII. 1979

For the United Kingdom of Great Britain

21. 12.1979
with reservation annexed

21. XII. 79

For the Swiss Confederation

For the Czechoslovak Socialist Republic

21.12.1979

For the Republic of Turkey

21.12.1979

For the Ukrainian Soviet Socialist Republic

21/XII-1979.

For the Union of Soviet Socialist Republics

...svia

21.12.79

For the Socialist Federal Republic

For the Republic of San Marino

21/12/79

Paris, 12.5.1980

Legal Adviser of the United Nations Educational, Scientific and Cultural Organization

[illegible] CONGRESS [illegible] Session	SENATE	TREATY DOC. [illegible]

PROTOCOL AMENDING THE 1916 CONVENTION WITH CANADA FOR THE PROTECTION OF MIGRATORY BIRDS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

[illegible]

[illegible]

Paris 12.6.1980

Legal Adviser of the United Nations Educational, Scientific and
Cultural Organization

96th Congress } SENATE { Executive
2d Session } { W

PROTOCOL AMENDING THE 1916 CONVENTION WITH CANADA FOR THE PROTECTION OF MIGRATORY BIRDS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL AMENDING THE CONVENTION OF AUGUST 16, 1916, FOR THE PROTECTION OF MIGRATORY BIRDS IN CANADA AND THE UNITED STATES OF AMERICA, SIGNED AT OTTAWA JANUARY 30, 1979

November 24, 1980.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 8) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *November 24, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Protocol Amending the Convention of August 16, 1916 for the Protection of Migratory Birds in Canada and the United States of America. The Protocol modernizes and adds flexibility to the subsistence taking provisions of the Canada convention by allowing the contracting parties to authorize the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska and the Indians and Inuit of Canada for their own nutritional and other essential needs, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds. The report of the Department of State is enclosed for the information of the Senate in connection with its consideration of the Protocol.

The 1916 Convention pertaining to Canada was the first of our migratory bird conventions and reflected the knowledge of ornithology and migratory bird management at the time. The Convention makes a valuable contribution to the conservation of migratory birds by establishing for migratory game birds, migratory insectivorous birds, and other migratory nongame birds, closed seasons during which no hunting is permitted except for scientific or propagating purposes under permits issued by proper authorities. The taking of nests or eggs of such birds is also prohibited except for scientific or propagating purposes under laws or regulations.

The Convention has very narrow exceptions which permit the taking by Alaskan Eskimos and Indians of a few sea birds and eggs for subsistence purposes. These narrow exceptions present two problems, however. They do not recognize the centuries old historical use of other species of migratory birds by Alaskan natives. In addition, they do not recognize and permit needed subsistence taking by other local rural residents of bush Alaska who are neither Indian, Aleut, nor Eskimo. As a result, the provisions of the Convention have been widely ignored by the rural subsistence inhabitants of Alaska. Further, there has been considerable friction among different user groups, and between user groups and law enforcement and management officials. The conclusion of the Department of the Interior is that the existing subsistence provisions of the Convention are "unworkable, unenforceable, and incapable of responding to the legitimate subsistence needs of many rural Alaskans."

The provisions of the Protocol adequately respond to the subsistence needs of the State of Alaska, while at the same time protecting our migratory bird resources. The Protocol does not abrogate the limited rights granted to Indians and Eskimos in the 1916 Convention, but broadens subsistence taking rights to all "indigenous inhabitants of the State of Alaska" so as to respond to subsistence needs of rural Alaska in a racially non-discriminatory way. Excessive exploitation of the birds is guarded against by reserving to the competent authorities of the two countries the right respectively to determine what constitutes legitimate subsistence needs, and to establish hunting seasons so as to provide for the preservation and maintenance of stocks of migratory birds.

I am confident that this Protocol will enhance our ability to manage and conserve a valuable resource. I urge the Senate to act favorably on this Convention at an early date by giving its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, December 12, 1979.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you with a view to its transmission to the Senate for advice and consent to ratification the Protocol Amending the Convention of August 16, 1916 for the Protection of Migratory Birds in Canada and the United States of America, signed at Ottawa January 30, 1979. The Protocol modernizes and adds flexibility to the subsistence taking provisions of the Canada convention by allowing the contracting parties to authorize the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska and the Indians and Inuit of Canada for their own nutritional and other essential needs, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.

In addition to the 1916 Convention pertaining to Canada, the United States has migratory bird conventions with Mexico (1936), Japan (1972), and the Union of Soviet Socialist Republics (1976). During the years since the Canada convention was negotiated the knowledge of ornithology and migratory bird management has expanded considerably. This is reflected in the growing sophistication of the more recent conventions. Ironically, however, as the texts of the subsequent conventions have been improved, some of their provisions have not been fully implemented because of the more restrictive corresponding provisions in the earlier conventions.

The most troubling example of this problem concerns the provisions for subsistence hunting in Alaska. The Canada convention establishes a closed season on migratory game birds (generally between March 10 and September 1, but between February 1 and August 15 for some birds in the eastern United States and Canada), but stipulates that "Indians may take at any time scoters for food but not for sale." A closed season on migratory insectivorous birds and other migratory nongame birds is to continue throughout the year, except that "Eskimos and Indians may take at any season auks, auklets, guillemots, murres and puffins, and their eggs for food and their skins for clothing, but the birds and eggs so taken shall not be sold or offered for sale."

The Mexican convention is silent altogether on the issue of subsistence hunting in Alaska. It could therefore be argued that this convention is the most restrictive on this point, allowing only sport hunting in Alaska. This extreme interpretation was not the intent of the convention negotiators, however, and has never been administratively adopted by the Department of the Interior.

Under the Japan convention subsistence taking of any migratory birds covered by the convention may be permitted by law or regulation. Granting of subsistence rights is still racially preferential, however, in that it is limited to "Taking by Eskimos, Indians, and indigenous peoples of the Trust Territory of the Pacific Islands for their own food and clothing."

In light of the inconsistencies and inadequacies of the earlier convention provisions on subsistence, the Department of the Interior conducted an extensive review of the problem in conjunction with the drafting of the U.S.S.R. convention. That convention as negotiated and ratified reflects the recommendations of that review. Similarly to the Japan convention, the U.S.S.R. convention's subsistence exemption can, on the basis of laws, decrees or regulations, be extended to any migratory birds covered by the convention. The exemption is racially neutral; it allows "... taking of migratory birds and the collection of their eggs by the indigenous inhabitants of ... the State of Alaska for their own nutritional and other essential needs. ..." To protect the migratory bird resource from excessive exploitation, the exemption envisages strict regulatory control of subsistence taking through determination by the respective countries' competent authorities of what constitutes "nutritional and other essential needs," and by determination of hunting seasons "so as to provide for the preservation and maintenance of stocks of migratory birds."

The Protocol amending the Canada convention follows the U.S.S.R. convention's subsistence hunting provisions closely. The Protocol does not abrogate the limited rights granted to Indians and Eskimos in the 1916 Convention, but it broadens subsistence taking rights to "indigenous inhabitants of the State of Alaska" so as to respond to subsistence needs there in a racially non-discriminatory way. Excessive exploitation of the birds is guarded against by reserving to the competent authorities of the parties the right respectively to determine what constitutes "nutritional and other essential needs", and to establish hunting seasons "so as to provide for the preservation and maintenance of stocks of migratory birds."

In order to make the explicit provisions of the Japan and Mexico conventions regarding subsistence hunting fully consistent with the corresponding provisions of the U.S.S.R. convention and the Canadian Protocol, it will also be necessary to negotiate protocols to amend the Japan and Mexico conventions. We are now taking steps to begin these negotiations. However, this process may take some time, especially in the case of Mexico. Because of the proximity of Canada to Alaska and the presence of similar subsistence problems on both sides of the Alaska/Canada border, the Canadian convention logically should be regarded as the one most appropriate to set the tone and establish the framework for addressing subsistence needs in the northernmost reaches of the hemisphere. We believe the Canadian Protocol is the most significant one to be negotiated and ratified. We therefore believe it is important to proceed with the ratification of the protocol at this time, and to send the Japan and Mexican amendments to the Senate in due course when their negotiation has been completed.

The Protocol was negotiated by the Department of the Interior in coordination with the Department of State, and both agencies join in supporting its ratification at this time.

I recommend that you transmit the Protocol to the Senate with the recommendation that it be approved at an early date.

Respectfully submitted.

WARREN CHRISTOPHER.

Protocol Amending the Convention of August 16, 1916, for the Protection of Migratory Birds in Canada and the United States of America

The Government of Canada and the Government of the United States of America,

Desirous of amending the Migratory Birds Convention signed at Washington on August 16, 1916,

Have agreed as follows:

ARTICLE I

Article 2 of the Convention of August 16, 1916 for the Protection of Migratory Birds in Canada and the United States is amended by adding the following additional paragraph:

"Notwithstanding any other provision of this Convention, the High Contracting Powers may, without prejudice to those rights accorded to Indians by sub-paragraph 1 of the first paragraph of this Article and to Eskimos and Indians by subparagraph 3 of the said first paragraph, authorize by statute, regulation, or decree the taking of migratory birds and the collection of their eggs by the indigenous inhabitants of the State of Alaska and the Indians and Inuit of Canada for their own nutritional and other essential needs (as determined by the competent authority of each High Contracting Power), during any period of the year in accordance with seasons established by the competent authority of each High Contracting Power respectively, so as to provide for the preservation and maintenance of stocks of migratory birds."

ARTICLE II

This Protocol shall be subject to ratification. It shall enter into force on the date of exchange of instruments of ratification which shall take place at Washington as soon as possible.

In witness whereof, the undersigned, being duly authorized for this purpose by their respective Governments, have signed the present Protocol.

Done in duplicate at Ottawa this 30th day of January, 1979 in the English and French languages, each version being equally authentic.

L. S. Marchand
For the Government of Canada
Pour le Gouvernement du Canada

Cecil D. Andrus
For the Government of the
United States of America
Pour le Gouvernement des
Etats-Unis d'Amérique

96TH CONGRESS } SENATE { EXECUTIVE
2d Session } { X

CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES ADOPTED AT A DIPLOMATIC CONFERENCE HELD IN CANBERRA, AUSTRALIA, MAY 7–20, 1980, AND SIGNED ON BEHALF OF THE UNITED STATES ON SEPTEMBER 11, 1980

DECEMBER 2, 1980.—Convention was read the first time, and together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O—82——1 (Pt. 9) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 2, 1980.*

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to ratification, the Convention on the Conservation of Antarctic Marine Living Resources. I also transmit for the information of the Senate the report of the Department of State with respect to this treaty.

The Convention on the Conservation of Antarctic Marine Living Resources will establish international mechanisms and create legal obligations necessary for the protection and conservation of the marine living resources found in the waters surrounding Antarctica. The Convention incorporates an ecosystem approach to the management of those resources, including standards designed to enable mankind to conserve the individual populations and species and to maintain the health of the Antarctic marine ecosystem as a whole. Implementation of this Convention offers a welcome and unusual opportunity to apply to shared resources an effective regulatory framework prior to the emergence of large-scale commercial harvesting of those resources.

The significance of this Convention lies not only in its environmental and resource management provisions and objectives. It also represents an important example of international cooperation among the Consultative Parties of the Antarctic Treaty. The system established by the Antarctic Treaty two decades ago has permitted its Parties, who maintain differences of position concerning claims to territorial sovereignty in Antarctica, to work together to further scientific research and to ensure that Antarctica does not become the scene or object of international discord. This new Convention, which extends this unique pattern of international cooperation into the area of resource management, is thus also important as an international legal and political undertaking.

The United States played a leading role in the negotiation of the Convention on the Conservation of Antarctic Marine Living Resources. The Convention reflects our concern for the protection of the Antarctic marine ecosystem—including the whales, penguins and seals which are components of it. It is my hope that the United States will also play a leading role in the effective implementation of the Convention. To this end, it is important that the United States be represented at the first meeting of the Commission which will be held within a year of the entry into force of the Convention following the deposit of the eighth instrument of ratification.

I recommend that the Senate give early and favorable consideration to this treaty and give its advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

Department of State,
Washington, October 29, 1980.

The President,
The White House.

The President: I have the honor to submit to you, with a view to transmittal to the Senate for its advice and consent to ratification, the Convention on the Conservation of Antarctic Marine Living Resources.

The Convention on the Conservation of Antarctic Marine Living Resources was adopted at a diplomatic conference held in Canberra, Australia, May 7–20, 1980. The Convention was opened for signature on August 1, 1980 and was signed on behalf of the United States Ambassador to Australia on September 11, 1980.

Fifteen nationals participated in the Canberra Conference: the thirteen nations which are Antarctic Treaty Consultative Parties—Argentina, Australia, Belgium, Chile, France, Japan, New Zealand, Norway, Poland, South Africa, the U.S.S.R., the U.K. and the U.S.—as well as the Federal Republic of Germany, and the German Democratic Republic. Observer delegations from the European Community (EC), the United Nations Food and Agriculture Organization (FAO), the International Whaling Commission (IWC), the International Union of the Conservation of Nature and Natural Resources (IUCN), the Scientific Committee on Oceanic Research (SCOR), the Scientific Committee on Antarctic Research (SCAR) and the International Oceanographic Committee (IOC) also attended the conference.

The Convention on the Conservation of Antarctic Marine Living Resources is an important conservation agreement. It provides for an ecosystem approach to the management of the marine living resources found in the waters surrounding Antarctica and creates the obligations and machinery necessary to implement this approach. The Convention is also an important political agreement. Its conclusion reflects creative accommodations among those states active in and around Antarctica, who have differing positions on territorial sovereignty and related maritime jurisdiction in Antarctica. The system it establishes will also permit the Parties to make the accommodations necessary to develop and implement effective management measures.

THE NEGOTIATIONS

Negotiation of the Convention on the Conservation of Antarctic Marine Living Resources grew out of an initiative taken by the Antarctic Treaty Consultative Parties and reflected in agreed recommendations under the Antarctic Treaty. Specifically, Recommendation IX-2 of the Ninth Antarctic Treaty Consultative Meeting, held in London in 1977, called for establishment of a regime for the conservation of Antarctic marine living resources and outlined a two-stage procedure for development of such a regime. The first stage involved preparation of a draft regime by the Consultative Parties, and the second stage involved conclusion of the regime at a formal conference of the Consultative Parties and other interested states and organizations. During the first stage there were special meetings of Antarctic Treaty Consultative Parties in Canberra and Buenos Aires in 1978 and informal discussions held in Washington and Bern in late 1978 and during 1979. These meetings resulted in the development of a draft convention which became the basic working document for the second stage—the diplomatic conference held in Canberra, May 7–20, 1980. (The diplomatic conference was preceded by a final two-day Special Consultative Meeting which formally transmitted the working documents to the conference.)

During the course of the negotiations seven major issues arose regarding the nature of, or relating to, the Convention. These involved:

- —the conservation standard of the Convention;
- —the area of application of the Convention
- —territorial sovereignty and maritime jurisdiction in the Convention area;
- —decision making;
- —the Convention's links to the Antarctic Treaty;
- —participation in the Convention by the European Community; and
- —interim measures.

The Conservation Standard.—The waters surrounding Antarctica constitute a rich and distinctive marine ecosystem. This system is characterized by short, simple food chains and the dependence of a large number of species upon a single food source—krill. Antarctic krill (a small shimp-like crustacean) is food in enormous quantities in Antarctic waters and has become the object of considerable interest because of its potential for commercial harvesting. Concern over the possible effects of large-scale harvesting of krill was a major impetus to the negotiation of the Convention.

The U.S., supported by a number of the participants in the negotiations, strongly advocated an ecosystem approach to the management of krill and the other species found in Antarctic waters. Such an approach would address not only the effects of harvesting upon target species, but also upon dependent species and the ecosystem as a whole. The states with the most immediate interests in harvesting expressed concern that such an approach could be formulated so as to prevent even carefully regulated fishing activities. The conservation standard which emerged from the negotiations fully satisfies U.S. interest in an ecosystem approach. It recognizes that rational utilization of the resources covered is included in the concept of conservation, but provides a commitment to ensuring the health of target and dependent species and the ecosystem as a whole, including prevention of irreversible changes in that ecosystem.

The Area of Application.—The Antarctic Treaty applies to the area south of 60 degrees South Latitude. Early in discussion of the new Conventionon Antarctic Marine Living Resources, it became clear that the Convention should cover a large area, because the range of the species involved extends well north of the area of the Antarctic Treaty—up to the Antarctic Convergence, or polar front, which is an oceanographic boundary between Antarctic waters to the south and warmer sub-Antarctic waters to the north. Therefore, it was agreed that it was important for the Convention to apply to all waters south of the Convergence.

Definition of the Convergence for the purposes of the Convention, however, represented an intricate scientific and, in fact, political issue. The Convergence is a complex transition zone which, in response to environmental conditions, fluctuates both in time and space. In addition, there are islands south of the Convergence over which state sovereignty is not disputed in contrast to the areas of Antarctic proper (south of 60 degrees South Latitude).

The participants in the negotiations agreed to delineate the area of the Convention by a set of coordinates understood as a rough approximation of the Convergence. As noted, this area includes islands clearly under the national jurisdiction of participating governments. One of these governments—France—expressed serious reservation over including these islands in the area of application of the Convention on the grounds that the implication might be created that its sovereignty was disputed. After prolonged discussion a solution was found which permitted France and other participants in similar situations to accept inclusion in the Convention area of the waters around the islands in question. This solution took the form of a statement by the Chairman of the Canberra Conference regarding how the Convention would apply to such islands. This statement was included in the Final Act of the Conference without objection.

Territorial Sovereignty and Maritime Jurisdiction in Antarctica.—Under the Antarctic Treaty, the U.S. neither asserts nor recognizes claims to territorial sovereignty in Antarctica. Five other Consultative Parties share the U.S. view; the remaining seven Consultative Parties, however, assert such claims to territorial sovereignty in Antarctica. Because the claimant states consider that jurisdiction over marine resources derives from territorial sovereignty, the participants in the negotiation had to deal with their basic differences of view over the existence and nature of maritime jurisdiction in the Convention area.

The participants recognized that the Convention, like the Antarctic Treaty, could not finally resolve differences over sovereignty and related maritime jurisdiction. Basing their efforts upon the Antarctic Treaty, they were able to structure the Convention and future activities under it in such fashion that all participants can cooperate in creating and implementing an effective management system without prejudice to their legal views. The specific formulation of this accommodation is found in Article IV of the Convention which, to meet the legitimate concerns of those countries with uncontested sovereignty over islands within the Convention area north of 60 degrees south Latitude, includes a reference to coastal state jurisdiction.

Decisionmaking.—From the outset the participants in the negotiations looked to the Convention to establish organizational machinery for conserving the resources of the Antarctic marine ecosystem. The question of how management decisions would be made within this organization was obviously of basic importance.

In approaching this question, means had to be found to balance not only potentially varying interests regarding the harvest of resources themselves but also the differing perceptions over sovereignty and jurisdiction in the Convention area. After considering a variety of possible decisionmaking systems it became clear that the only generally acceptable solution was to provide for decisions on matters of substance by consensus. The consensus—or objection—procedure is a process which is designed to produce genuinely negotiated decisions. In choosing a consensus system the participants in the negotiations explicitly drew upon the practice of the Antarctic Treaty system in which consensus has provided an effective means of decisionmaking over the twenty years of the system's existence. Agreement on consensus at the decisionmaking principle represented a key element (along with the conservation standard and juridical formulation) in the overall accommodation necessary to develop an agreed regime.

The Convention's Links to the Antarctic Treaty.—The relationship between the Convention on the Conservation of Antarctic Marine Living Resources and the Antarctic Treaty was also an important question in the negotiations. As the Antarctic marine ecosystem covers an area larger than the area of the Antarctic Treaty and because it was anticipated that there could be different Parties to the new Convention, it was recognized early on that the Convention on the Conservation of Antarctic Marine Living Resources should be a treaty distinct from and independent of the Antarctic Treaty. However, it was also recognized that the new Convention would complement the Antarctic Treaty and that the two should be closely linked.

The negotiation of provisions which would extend relevant obligations of the Antarctic Treaty to Parties to the new Convention without creating legal difficulties or obstacles to participation was a continuing and complex issue. The final result—which incorporates in the Convention the basic principles found in the Antarctic Treaty of using Antarctica exclusively for peaceful purposes and of the responsibilities of the Consultative Parties for protecting the environment of Antarctica—represents a reasonable balance between the concerns and interests of the Consultative Parties and those of non-Consultative Parties who may become Parties to the new Convention.

Participation by the European Community.—Four of the countries participating in the Canberra Conference—Belgium, France, the Federal Republic of Germany, and the United Kingdom—are members of the European Community (EC). Under the Community's common fisheries policy these countries have transferred certain legal competences to the Community on some of the matters covered by the Convention. This fact made it necessary that the Community as an institution, along with the four member countries, all become Parties to the Convention and participate in the work of the conservation institutions which it would create. Negotiation of the manner in which this shared competence would be reflected in the Convention—particularly in the decision-making system of the conservation institutions—was a complex and difficult matter.

An accommodation on the question of EC participation was reached in the final days of the Canberra Conference. It provides for participation in the Convention by both the EC and its member countries and their representation in the Commission to be established provided that there is no multiple or double voting on any issue.

Interim Measures.—The U.S. took the lead in the negotiations in seeking the agreement of the participants to take steps for the conservation of Antarctic marine living resources in the interim period after signature of the Convention but prior to its entry into force. These steps were designed to facilitate early ratification of the Convention and its effective operation once in force. Though there were reservations to the concept of interim measures, the Canberra Conference adopted two conference resolutions which essentially satisfied U.S. objectives for the interim period. The resolutions include:

—a commitment by the signatories to ratify the Convention as quickly as possible;

—a commitment by the signatories to show the greatest concern and care in any harvesting during the interim period, bearing in mind the conservation objectives set forth in the Convention;

—a commitment to the greatest extent practicable and feasible, to cooperate in development and sharing of scientific and fisheries data necessary for the effective operations of the Convention;

—a commitment to compile and distribute such data and share it among the Contracting Parties to the Convention upon its entry into force (prior to the first meeting of the Commission and Scientific Committee); and

—a commitment by Australia, as the depositary government, to convene a meeting during the interim period to facilitate early and effective operation of the institutions to be established by the Convention.

THE TEXT OF THE CONVENTION

The Convention consists of thirty-three articles. Article I provides that the Convention apply to the Antarctic marine living resources found south of the Antarctic Convergence. The location of the Convergence, for the purposes of the Convention, is defined by specific geographic coordinates. The article makes clear that the Convention applies to all species of living organisms south of the Convergence.

Article II establishes as the objective of the Convention the conservation (including rational use) of Antarctic marine living resources. To this end the Article sets forth a conservation standard in accordance with which all harvesting and associated activities must take place. The conservation standard (paragraph 3 of Article II) establishes three important principles to ensure that any harvesting of Antarctic marine living resources take place in a manner designed to afford the greatest protection possible to the Antarctic marine ecosystem.

These principles provide for:

—prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment (below

a level close to that which ensures that greatest net annual increment);
—maintenance of the relationships between harvested, dependent and related populations; and
—prevention of irreversible changes in the Antarctic marine ecosystem.

These principles are to be applied as an interrelated whole. As such, they constitute a strict ecosystem standard which all harvesting and associated activities under the Convention must meet.

Article III extends to Contracting Parties which are not parties to the Antarctic Treaty the obligations contained in Articles I and V of the Antarctic Treaty. Those articles provide that Antarctica shall be used exclusively for peaceful purposes and prohibit military activities, nuclear explosions and the disposal of radioactive waste in Antarctica. This article of the Convention is designed to ensure that all Contracting Parties, active in the seas surrounding Antarctica, will be bound by the same obligations.

Article IV of the Convention is the important juridical article which makes clear that the Convention, as well as actions and activities thereunder, do not prejudice the basic position of the Contracting Parties on claims to territorial sovereignty and related maritime jurisdiction in the Convention area. Therefore, the Convention in no way affects the position of the U.S. under the Antarctic Treaty with regard to territorial sovereignty in Antarctica. It is the U.S. position under the Antarctic Treaty neither to assert nor to recognize claims to territorial sovereignty in Antarctica. As a corollary of this position, the U.S. does not recognize that a claim to territorial sovereignty in Antarctica is capable of creating any sort of maritime jurisdiction. In our view, for instance, the reference to coastal state jurisdiction in Article IV is understood to refer only to waters around islands within the Convention area north of 60 degrees South Latitude.

Article V establishes an additional link between the Convention and the Antarctic Treaty. Under the Antarctic Treaty system, the Antarctic Treaty Consultative Parties are bound by obligations to preserve and protect the Antarctic environment, including the native fauna and flora of Antarctica. Article V provides that Contracting Parties to the Convention, which are not Antarctic Treaty Consultative Parties, will observe, as and when appropriate, such obligations undertaken by the Consultative Parties.

Article VI provides that the Convention does not derogate from the rights and obligations of Contracting Parties under the International Whaling Convention or the Convention for the Conservation of Antarctic Seals. The effect of this article is to recognize that direct regulation of the whales and seals covered by those conventions will not be undertaken by the new Convention. However, those species are covered by the new Convention specifically in the application of its conservation standard. In other words, the role of these species in the Antarctic marine ecosystem and the impact upon them of any harvesting of other species has to be taken into account in development of conservation measures under the Convention.

Articles VII through XIV relate to the creation, functions, and institutional make-up of the Commission and Scientific Committee to be established by the Convention.

The Convention provides for the establishment of the Commission for the Conservation of Antarctic Marine Living Resources to give effect to the principles and objective of the Convention. Its headquarters will be located in Hobart, Tasmania.

The functions of the Commission are set out in Article IX. Its primary function is to give effect to the objectives and principles set forth in Article II (which defines the Convention's conservation standard). To this end, the Commission is charged with:

—facilitation of research and comprehensive studies of Antarctic marine living resources and of the Antarctic marine ecosystem;
—compilation of data relating to populations of Antarctic marine living resources;
—acquisition of catch-and-effort statistics on harvested populations;
—analysis and publication of such data and statistics;
—identification of conservation needs and analysis of the effectiveness of conservation measures;
—formulation, adoption and revision of conservation measures;
—implementation of the Convention's system of observation and inspection;
—carrying out such other activities as are necessary to fulfill the objective of the Convention.

Article IX also includes an illustrative listing of the types of action that might be included in conservation measures taken by the Commission. The listing makes clear that the Commission may draw on the full range of such measures in pursuing the objective of the Convention.

Conservation measures adopted by the Commission become effective upon all its members 180 days after their adoption, unless within 90 days of adoption there is objection by a government of a member of the Commission. In that case the conservation measure in question would remain in force for other members of the Commission unless they too decide not to implement the measures. There is also provision for the Commission to convene in special session to review any conservation measure to which an objection has been made.

Article XII deals wtih the important issue of decisionmaking in the Commission. It provides that decisions on all matters of substance be taken by consensus. The article also provides the terms by which a regional economic integration organization, which is a member of the Commission, would participate in the decisionmaking process. (The provisions of the article incorporate a key element of the compromise on EC participation in the Convention).

Article XIV provides for the establishment of the Scientific Committee for the Conservation of Antarctic Marine Living Resources as a consultative body to the Commission. Each member of the Commission is to be represented on the Scientific Committee, whose role is to provide expert and independent advice to the Commission. The specific functions of the Scientific Committee, set forth in Article XV, include establishment of criteria and methods for determining conservation needs with regard to Antarctic marine living resources; assessment of their populations; analysis of data and other scientific information relating to these resources; transmission of assessments, analyses, reports and recommendations to the Commission; and formulation of proposals regarding needed research on Antarctic marine living resources.

Article XVII provides for the appointment of an Executive Secretary, along with a permanent secretariat staff, to serve the Commission and Scientific Committee. The Convention provides (Article XVIII) that the official languages of the Commission shall be English, French, Spanish and Russian.

Article XIX establishes that the budget of the Commission for the first five years of its operation shall be based upon equal contributions from the members of the Commission. Thereafter, a formula is to be developed which will include the levels of harvesting of Antarctic marine living resources by Commission members as a factor in the budget contribution formula. Such new formula, anticipated after the first five years of Commission operation, is to be developed by the Commission.

Article XX imposes the obligation upon members of the Commission to provide necessary scientific data to the Commission, including information about their harvesting activities. It provides that members of the Commission keep the Commission informed of their efforts to implement conservation measures in force. Each member of the Commission is also obligated to take advantage of all opportunities, including harvesting activities, to collect data necessary for informed decisions on conservation measures.

Article XXI requires each Contracting Party to take all appropriate steps within its competence, including enactment of legislation if necessary, to ensure compliance with the Convention and measures taken thereunder. Article XXII also requires Contracting Parties to take steps consistent with the United Nations Charter to ensure that no one engages in activities contrary to the objective of the Convention.

Article XXIII provides for close cooperation between the Commission for the Conservation of Antarctic Marine Living Resources and the Scientific Committee, on the one hand, and relevant intergovernmental and non-governmental organizations on the other. These organizations include FAO, SCAR, SCOR, and the IWC.

Article XXIV provides for the establishment by the Commission of a system of observation and inspection to promote the objective and ensure observance of the provisions of the Convention. The article sets forth general principles upon which the system of observation and inspection is to be based and provides for the establishment of interim inspection and observation arrangements pending establishment of the formal system by the Commission.

Article XXV provides for a non-binding dispute settlement procedure similar to that contained in the Antarctic Treaty.

Articles XXVI through XXXIII relate to participation in, and entry into force of, the Convention. The Convention is open from August 1 to December 31, 1980 for signature by those States participating in the diplomatic conference. The Convention will enter into force on the 30th day following the deposit of the eighth instrument of ratification, acceptance, or approval. The Convention is open to accession by states interested in research or harvesting activities in relation to Antarctic marine living resources. Regional economic integration organizations which (a) include among their members a state member of the Commission and (b) to which member states have transferred in whole or in part legal competence covered by the Convention, may also accede to the Convention.

The Convention provides for amendment upon agreement by all members of the Commission. It also includes a withdrawal provision.

CONCLUSION

The Department of State worked with the interested agencies of the Federal government in developing and negotiating U.S. positions with regard to the Convention on the Conservation of Antarctic Marine Living Resources. In addition, close liaison was maintained with the Congress, affected interest groups, and the public at large during the negotiating process. Representatives of public interest groups and the Congress were afforded the opportunity to serve on U.S. delegations to the sessions of the Special Consultative Meeting and to the diplomatic conference which drafted and concluded the Convention.

The Department of State strongly supports early ratification of the Convention on the Conservation of Antarctic Marine Living Resources. The Convention serves important U.S. environmental and resource management interests as well as our long-term political and legal interests in maintaining Antarctica as an area of peaceful international cooperation. The Department of Commerce, the National Science Foundation and the Marine Mammal Commission, which participated with the Department of State in the negotiation of this Convention, concur in this view. Early ratification of the Convention is especially desirable to enable the U.S. to be a full participant at the first meeting of the Commission to ensure that the conservation concerns which have been a primary U.S. interest in the negotiations receive full attention as the Commission begins its operation.

Along with the text of the Convention, I include for the information of the Senate a copy of the Final Act of the Canberra Conference.

I recommend, therefore, that the Convention on the Conservation of Antarctic Marine Living Resources be transmitted to the Senate as soon as possible for its advice and consent to ratification.

Respectfully submitted.

EDMUND S. MUSKIE.

CONVENTION ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES

The Contracting Parties,

Recognising the importance of safeguarding the environment and protecting the integrity of the ecosystem of the seas surrounding Antarctica;

Noting the concentration of marine living resources found in Antarctic waters and the increased interest in the possibilities offered by the utilization of these resources as a source of protein;

Conscious of the urgency of ensuring the conservation of Antarctic marine living resources;

Considering that it is essential to increase knowledge of the Antarctic marine ecosystem and its components so as to be able to base decisions on harvesting on sound scientific information;

Believing that the conservation of Antarctic marine living resources calls for international co-operation with due regard for the provisions of the Antarctic Treaty and with the active involvement of all States engaged in research or harvesting activities in Antarctic waters;

Recognising the prime responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the Antarctic environment and, in particular, their responsibilities under Article IX, paragraph 1(f) of the Antarctic Treaty in respect of the preservation and conservation of living resources in Antarctica;

Recalling the action already taken by the Antarctic Treaty Consultative Parties including in particular the Agreed Measures for the Conservation of Antarctic Fauna and Flora, as well as the provisions of the Convention for the Conservation of Antarctic Seals;

Bearing in mind the concern regarding the conservation of Antarctic marine living resources expressed by the Consultative Parties at the Ninth Consultative Meeting of the Antarctic Treaty and the importance of the provisions of Recommendation IX-2 which led to the establishment of the present Convention;

Believing that it is in the interest of all mankind to preserve the waters surrounding the Antarctic continent for peaceful purposes only and to prevent their becoming the scene or object of international discord;

Recognizing, in the light of the foregoing, that it is desirable to establish suitable machinery for recommending, promoting, deciding upon and co-ordinating the measures and scientific studies needed to ensure the conservation of Antarctic marine living organisms;

Have Agreed as follows:

ARTICLE I

1. This Convention applies to the Antarctic marine living resources of the area south of 60° South latitude and to the Antarctic marine living resources of the area between that latitude and the Antarctic Convergence which form part of the Antarctic marine ecosystem.

2. Antarctic marine living resources means the populations of fin fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.

3. The Antarctic marine ecosystem means the complex of relationships of Antarctic marine living resources with each other and with their physical environment.

4. The Antarctic Convergence shall be deemed to be a line joining the following points along parallels of latitude and meridians of longitude: 50°S, 0°; 50°S, 30°E; 45°S, 30°E; 45°S, 80°E; 55°S, 80°E; 55°S, 150°E; 60°S, 150°E; 60°S, 50°W; 50°S, 50°W; 50°S, 0°.

ARTICLE II

1. The objective of this Convention is the conservation of Antarctic marine living resources.

2. For the purposes of this Convention, the term "conservation" includes rational use.

3. Any harvesting and associated activities in the area to which this Convention applies shall be conducted in accordance with the provisions of this Convention and with the following principles of conservation:

(a) Prevention of decrease in the size of any harvested population to levels below those which ensure its stable recruitment. For this purpose its size should not be allowed to fall below a level close to that which ensures the greatest net annual increment;

(b) Maintenance of the ecological relationships between harvested, dependent and related populations of Antarctic marine living resources and the restoration of depleted populations to the levels defined in sub-paragraph (a) above; and

(c) Prevention of changes or minimization of the risk of changes in the marine ecosystem which are not potentially reversible over two or three decades, taking into account the state of available knowledge of the direct and indirect impact of harvesting, the effect of the introduction of alien species, the effects of associated activities on the marine ecosystem and of the effects of environmental changes, with the aim of making possible the sustained conservation of Antarctic marine living resources.

ARTICLE III

The Contracting Parties, whether or not they are Parties to the Antarctic Treaty, agree that they will not engage in any activities in the Antarctic Treaty area contrary to the principles and purposes of that Treaty and that, in their relations with each other, they are bound by the obligations contained in Articles I and V of the Antarctic Treaty.

ARTICLE IV

1. With respect to the Antarctic Treaty area, all Contracting Parties, whether or not they are Parties to the Antarctic Treaty, are bound by Articles IV and VI of the Antarctic Treaty in their relations with each other.

2. Nothing in this Convention and no acts or activities taking place while the present Convention is in force shall:

(a) Constitute a basis for asserting, supporting or denying a claim to territorial sovereignty in the Antarctic Treaty area or create any rights of sovereignty in the Antarctic Treaty area;

(b) Be interpreted as a renunciation or diminution by any Contracting Party of, or as prejudicing, any right or claim or basis of claim to exercise coastal state jurisdiction under international law within the area to which this Convention applies;

(c) Be interpreted as prejudicing the position of any Contracting Party as regards its recognition or nonrecognition of any such right, claim or basis of claim;

(d) Affect the provision of Article IV, paragraph 2, of the Antarctic Treaty that no new claim, or enlargement of an existing claim, to territorial sovereignty in Antarctica shall be asserted while the Antarctic Treaty is in force.

ARTICLE V

1. The Contracting Parties which are not Parties to the Antarctic Treaty acknowledge the special obligations and responsibilities of the Antarctic Treaty Consultative Parties for the protection and preservation of the environment of the Antarctic Treaty area.

2. The Contracting Parties which are not Parties to the Antarctic Treaty agree that, in their activities in the Antarctic Treaty area, they will observe as and when appropriate the Agreed Measures for the Conservation of Antarctic Fauna and Flora and such other measures as have been recommended by the Antarctic Treaty Consultative Parties in fulfillment of their responsibility for the protection of the Antarctic environment from all forms of harmful human interference.

3. For the purposes of this Convention, "Antarctic Treaty Consultative Parties" means the Contracting Parties to the Antarctic Treaty whose Representatives participate in meetings under Article IX of the Antarctic Treaty.

ARTICLE VI

Nothing in this Convention shall derogate from the rights and obligations of Contracting Parties under the International Convention for the Regulation of Whaling and the Convention for the Conservation of Antarctic Seals.

ARTICLE VII

1. The Contracting Parties hereby establish and agree to maintain the Commission for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as "the Commission").

2. Membership in the Commission shall be as follows:

(a) Each Contracting Party which participated in the meeting at which this Convention was adopted shall be a Member of the Commission;

(b) Each State Party which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as that acceding Party is engaged in research or harvesting activities in relation to the marine living resources to which this Convention applies;

(c) Each regional economic integration organization which has acceded to this Convention pursuant to Article XXIX shall be entitled to be a Member of the Commission during such time as its States members are so entitled;

(d) A Contracting Party seeking to participate in the work of the Commission pursuant to sub-paragraphs (b) and (c) above shall notify the Depositary of the basis upon which it seeks to become a Member of the Commission and of its willingness to accept conservation measures in force. The Depositary shall communicate to each Member of the Commission such notification and accompanying information. Within two months of receipt of such communication from the Depositary, any Member of the Commission may request that a special meeting of the Commission be held to consider the matter. Upon receipt of such request, the Depository shall call such a meeting. If there is no request for a meeting, the Contracting Party submitting the notification shall be deemed to have satisfied the requirements for Commission Membership.

3. Each Member of the Commission shall be represented by one representative who may be accompanied by alternate representatives and advisers.

ARTICLE VIII

The Commission shall have legal personality and shall enjoy in the territory of each of the States Parties such legal capacity as may be necessary to perform its function and achieve the purposes of this Convention. The privileges and immunities to be enjoyed by the Commission and its staff in the territory of a State Party shall be determined by agreement between the Commission and the State Party concerned.

ARTICLE IX

1. The function of the Commission shall be to give effect to the objective and principles set out in Article II of this Convention. To this end, it shall:

(a) Facilities research into and comprehensive studies of Antarctic marine living resources and of the Antarctic marine ecosystem;

(b) Compile data on the status of and changes in population of Antarctic marine living resources and on factors affecting the distribution, abundance and productivity of harvested species and dependent or related species or populations;

(c) Ensure the acquisition of catch and effort statistics on harvested populations;

(d) Analyse, disseminate and publish the information referred to in sub-paragraphs (b) and (c) above and the reports of the Scientific Committee;

(e) Identify conservation needs and analyse the effectiveness of conservation measures;

(f) Formulate, adopt and revise conservation measures on the basis of the best scientific evidence available, subject to the provisions of paragraph 5 of this Article;

(g) Implement the system of observation and inspection established under Article XXIV of this Convention;

(h) Carry out such other activities as are necessary to fulfill the objective of this Convention.

2. The conservation measures referred to in paragraph 1(f) above include the following:

(a) The designation of the quantity of any species which may be harvested in the area to which this Convention applies;

(b) The designation of regions and sub-regions based on the distribution of populations of Antarctic marine living resources;

(c) The designation of the quantity which may be harvested from the populations of regions and sub-regions;

(d) The designation of protected species;

(e) The designation of the size, age and, as approximate, sex of species which may be harvested;

(f) The designation of open and closed seasons for harvesting;

(g) The designation of the opening and closing of areas, regions or sub-regions for purposes of scientific study or conservation, including special areas for protection and scientific study;

(h) Regulation of the effort employed and methods of harvesting, including fishing gear, with a view, inter alia, to avoiding undue concentration of harvesting in any region or sub-region;

(i) The taking of such other conservation measures as the Commission considers necessary for the fulfilment of the objective of this Convention, including measures concerning the effects of harvesting and associated activities on components of the marine ecosystem other than the harvested populations.

3. The Commission shall publish and maintain a record of all conservation measures in force.

4. In exercising its functions under paragraph 1 above, the Commission shall take full account of the recommendations and advice of the Scientific Committee.

5. The Commission shall take full account of any relevant measures or regulations established or recommended by the Consultative Meetings pursuant to Article IX of the Antarctic Treaty or by existing fisheries commissions responsible for species which may enter the area to which this Convention applies, in order that there shall be no inconsistency between the rights and obligations of a Contracting Party under such regulations or measures and conservation measures which may be adopted by the Commission.

6. Conservation measures adopted by the Commission in accordance with this Convention shall be implemented by Members of the Commission in the following manner:

(a) The Commission shall notify conservation measures to all Members of the Commission;

(b) Conservation measures shall become binding upon all Members of the Commission 180 days after such notification, except as provided in sub-paragraphs (c) and (d) below;

(c) If a Member of the Commission, within ninety days following the notification specified in sub-paragraph (a), notifies the Commission that it is unable to accept the conservation measure, in whole or in part, the measure shall not, to the extent stated, be binding upon that Member of the Commission;

(d) In the event that any Member of the Commission invokes the procedure set forth in sub-paragraph (c) above, the Commission shall meet at the request of any Member of the Commission to review the conservation measure. At the time of such meeting and within thirty days following the meeting, any Member of the Commission shall have the right to declare that it is no longer able to accept the conservation measure, in which case the Member shall no longer be bound by such measure.

ARTICLE X

1. The Commission shall draw the attention of any State which is not a Party to this Convention to any activity undertaken by its nationals or vessels which, in the opinion of the Commission, affects the implementation of the objective of this Convention.

2. The Commission shall draw the attention of all Contracting Parties to any activity which, in the opinion of the Commission, affects the implementation by a Contracting Party of the objective of this Convention or the compliance by that Contracting Party with its obligations under this Convention.

ARTICLE XI

The Commission shall seek to co-operate with Contracting Parties which may exercise jurisdiction in marine areas adjacent to the area to which this Convention applies in respect of the conservation of any stock or stocks of associated species which occur both within those areas and the area to which this Convention applies, with a view to harmonizing the conservation measures adopted in respect of such stocks.

ARTICLE XII

1. Decisions of the Commission on matters of substance shall be taken by consensus. The question of whether a matter is one of substance shall be treated as a matter of substance.

2. Decisions on matters other than those referred to in paragraph 1 above shall be taken by a simple majority of the Members of the Commission present and voting.

3. In Commission consideration of any item requiring a decision, it shall be made clear whether a regional economic integration organization will participate in the taking of the decision and, if so, whether any of its member States will also participate. The number of Contracting Parties so participating shall not exceed the number of member States of the regional economic integration organization which are Members of the Commission.

4. In the taking of decisions pursuant to this Article, a regional economic integration organization shall have only one vote.

ARTICLE XIII

1. The headquarters of the Commission shall be established at Hobart, Tasmania, Australia.

2. The Commission hall hold a regular annual meeting. Other meetings shall also be held at the request of one-third of its members and as

otherwise provided in this Convention. The first meeting of the Commission shall be held within three months of the entry into force of this Convention, provided that among the Contracting Parties there are at least two States conducting harvesting activities within the area to which this Convention applies. The first meeting shall, in any event, be held within one year of the entry into force of this Convention. The Depositary shall consult with the signatory States regarding the first Commission meeting, taking into account that a broad representation of such States is necessary for the effective operation of the Commission.

3. The Depositary shall convene the first meeting of the Commission at the headquarters of the Commission. Thereafter, meetings of the Commission shall be held at its headquarters, unless it decides otherwise.

4. The Commission shall elect from among its members a Chairman and Vice-Chairman, each of whom shall serve for a term of two years and shall be eligible for re-election for one additional term. The first Chairman shall, however, be elected for an initial term of three years. The Chairman and Vice-Chairman shall not be representatives of the same Contracting Party.

5. The Commission shall adopt and amend as necessary the rules of procedure for the conduct of its meetings, except with respect to the matters dealt with in Article XII of this Convention.

6. The Commission may establish such subsidiary bodies as are necessary for the performance of its functions.

ARTICLE XIV

1. The Contracting Parties hereby establish the Scientific Committee for the Conservation of Antarctic Marine Living Resources (hereinafter referred to as "the Scientific Committee") which shall be a consultative body to the Commission. The Scientific Committee shall normally meet at the headquarters of the Commission unless the Scientific Committee decides otherwise.

2. Each Member of the Commission shall be a member of the Scientific Committee and shall appoint a representative with suitable scientific qualifications who may be accompanied by other experts and advisers.

3. The Scientific Committee may seek the advice of other scientists and experts as may be required on an ad hoc basis.

ARTICLE XV

1. The Scientific Committee shall provide a forum for consultation and co-operation concerning the collection, study and exchange of information with respect to the marine living resources to which this Convention applies. It shall encourage and promote co-operation in the field of scientific research in order to extend knowledge of the marine living resources of the Antarctic marine ecosystem.

2. The Scientific Committee shall conduct such activities as the Commission may direct in pursuance of the objective of this Convention and shall:

(a) Establish criteria and methods to be used for determinations concerning the conservation measures referred to in Article IX of this Convention;

(b) Regularly assess the status and trends of the populations of Antarctic marine living resources;

(c) Analyse data concerning the direct and indirect effects of harvesting on the populations of Antarctic marine living resources;

(d) Assess the effects of proposed changes in the methods or levels of harvesting and proposed conservation measures;

(e) Transmit assessments, analyses, reports and recommendations to the Commission as requested or on its own initiative regarding measures and research to implement the objective of this Convention;

(f) Formulate proposals for the conduct of international and national programs of research into Antarctic marine living resources.

3. In carrying out its functions, the Scientific Committee shall have regard to the work of other relevant technical and scientific organizations and to the scientific activities conducted within the framework of the Antarctic Treaty.

ARTICLE XVI

1. The first meeting of the Scientific Committee shall be held within three months of the first meeting of the Commission. The Scientific Committee shall meet thereafter as often as may be necessary to fulfill its functions.

2. The Scientific Committee shall adopt and amend as necessary its rules of procedure. The rules and any amendments thereto shall be approved by the Commission. The rules shall include procedures for the presentation of minority reports.

3. The Scientific Committee may establish, with the approval of the Commission, such subsidiary bodies as are necessary for the performance of its functions.

ARTICLE XVII

1. The Commission shall appoint an Executive Secretary to serve the Commission and Scientific Committee according to such procedures and on such terms and conditions as the Commission may determine. His term of office shall be for four years and he shall be eligible for reappointment.

2. The Commission shall authorize such staff establishment for the Secretariat as may be necessary and the Executive Secretary shall appoint, direct and supervise such staff according to such rules, and procedures and on such terms and conditions as the Commission may determine.

3. The Executive Secretary and Secretariat shall perform the functions entrusted to them by the Commission.

ARTICLE XVIII

The official languages of the Commission and of the Scientific Committee shall be English, French, Russian and Spanish.

ARTICLE XIX

1. At each annual meeting, the Commission shall adopt by consensus its budget and the budget of the Scientific Committee.

2. A draft budget for the Commission and the Scientific Committee and any subsidiary bodies shall be prepared by the Executive Secretary and submitted to the Members of the Commission at least sixty days before the annual meeting of the Commission.

3. Each Member of the Commission shall contribute to the budget. Until the expiration of five years after the entry into force of this Convention, the contribution of each Member of the Commission shall be equal. Thereafter the contribution shall be determined in accordance with two criteria: the amount harvested and an equal sharing among all Members of the Commission. The Commission shall determine by consensus the proportion in which these two criteria shall apply.

4. The financial activities of the Commission and Scientific Committee shall be conducted in accordance with financial regulations adopted by the Commission and shall be subject to an annual audit by external auditors selected by the Commission.

5. Each Member of the Commission shall meet its own expenses arising from attendance at meetings of the Commission and of the Scientific Committee.

6. A Member of the Commission that fails to pay its contributions for two consecutive years shall not, during the period of its default, have the right to participate in the taking of decisions in the Commission.

ARTICLE XX

1. The Members of the Commission shall, to the greatest extent possible, provide annually to the Commission and to the Scientific Committee such statistical biological and other data and information as the Commission and Scientific Committee may require in the exercise of their functions.

2. The Members of the Commission shall provide, in the manner and at such intervals as may be prescribed, information about their harvesting activities, including fishing areas and vessels, so as to enable reliable catch and effort statistics to be compiled.

3. The Members of the Commission shall provide to the Commission at such intervals as may be prescribed information on steps taken to implement the conservation measures adopted by the Commission.

4. The Members of the Commission agree that in any of their harvesting activities, advantage shall be taken of opportunities to collect data needed to assess the impact of harvesting.

ARTICLE XXI

1. Each Contracting Party shall take appropriate measures within its competence to ensure compliance with the provisions of this Convention and with conservation measures adopted by the Commission to which the Party is bound in accordance with Article IX of this Convention.

2. Each Contracting Party shall transmit to the Commission information on measures taken pursuant to paragraph 1 above, including the imposition of sanctions for any violation.

ARTICLE XXII

1. Each Contracting Party undertakes to exert appropriate efforts, consistent with the Charter of the United Nations, to the end that no one engages in any activity contrary to the objective of this Convention.

2. Each Contracting Party shall notify the Commission of any such activity which comes to its attention.

ARTICLE XXIII

1. The Commission and the Scientific Committee shall co-operate with the Antarctic Treaty Consultative Parties on matters falling within the competence of the latter.

2. The Commission and the Scientific Committee shall co-operate, as appropriate, with the Food and Agriculture Organisation of the United Nations and with other Specialised Agencies.

3. The Commission and the Scientific Committee shall seek to develop co-operative working relationships, as appropriate, with intergovernmental and non-governmental organizations which could contribute to their work, including the Scientific Committee on Antarctic Research, the Scientific Committee on Oceanic Research and the International Whaling Commission.

4. The Commission may enter into agreements with the organizations referred to in this Article and with other organizations as may be appropriate. The Commission and the Scientific Committee may invite such organizations to send observers to their meetings and to meetings of their subsidiary bodies.

ARTICLE XXIV

1. In order to promote the objective and ensure observance of the provisions of this Convention, the Contracting Parties agree that a system of observation and inspection shall be established.

2. The system of observation and inspection shall be elaborated by the Commission on the basis of the following principles:

(a) Contracting Parties shall co-operate with each other to ensure the effective implementation of the system of observation and inspecting, taking account of the existing international practice. This system shall include, inter alia, procedures for boarding and inspection by observers and inspectors designated by the Members of the Commission and procedures for flag state prosecution and sanctions on the basis of evidence resulting from such boarding and inspections. A report of such prosecutions and sanctions imposed shall be included in the information referred to in Article XXI of this Convention;

(b) in order to verify compliance with measures adopted under this Convention, observation and inspection shall be carried out on board vessels engaged in scientific research or harvesting of marine living resources in the area to which this Convention applies, through observers and inspectors designated by the Members of the Commission and operating under terms and conditions to be established by the Commission;

(c) designated observers and inspectors shall remain subject to the jurisdiction of the Contracting Party of which they are nationals. They shall report to the Member of the Commission by which they have been designated which in turn shall report to the Commission.

3. Pending the establishment of the system of observation and inspection, the Members of the Commission shall seek to establish interim arrangements to designate observers and inspectors and such designated observers and inspectors shall be entitled to carry out inspections in accordance with the principles set out in paragraph 2 above.

ARTICLE XXV

1. If any dispute arises between two or more of the Contracting Parties concerning the interpretation or application of this Convention, those Contracting Parties shall consult among themselves with a view to having the dispute resolved by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

2. Any dispute of this character not so resolved shall, with the consent in each case of all Parties to the dispute, be referred for settlement to the International Court of Justice or to arbitration; but failure to reach agreement on reference to the International Court or to arbitration shall not absolve Parties to the dispute from the responsibility of continuing to seek to resolve it by any of the various peaceful means referred to in paragraph 1 above.

3. In cases where the dispute is referred to arbitration, the arbitral tribunal shall be constituted as provided in the Annex to this Convention.

ARTICLE XXVI

1. This Convention shall be open for signature at Canberra from 1 August to 31 December 1980 by the States participating in the Conference on the Conservation of Antarctic Marine Living Resources held at Canberra from 7 to 20 May 1980.

2. The States which so sign will be the original signatory States of the Convention.

ARTICLE XXVII

1. This Convention is subject to ratification, acceptance or approval by signatory States.

2. Instruments of ratification, acceptance or approval shall be deposited with the Government of Australia, hereby designated as the Depositary.

ARTICLE XXVIII

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the eighth instrument of ratification, acceptance or approval by States referred to in paragraph 1 of Article XXVI of this Convention.

2. With respect to each State or regional economic integration organization which subsequent to the date of entry into force of this Con-

vention deposits an instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day following such deposit.

ARTICLE XXIX

1. This Convention shall be open for accession by any State interested in research or harvesting activities in relation to the marine living resources to which this Convention applies.

2. This Convention shall be open for accession by regional economic integration organizations constituted by sovereign States which include among their members one or more States Members of the Commission and to which the States members of the organization have transferred. in whole or in part, competences with regard to the matters covered by this Convention. The accession of such regional economic integration organizations shall be the subject of consultations among Members of the Commission.

1. This Convention may be amended at any time.

ARTICLE XXX

2. If one-third of the Members of the Commission request a meeting to discuss a proposed amendment the Depositary shall call such a meeting.

3. An amendment shall enter into force when the Depositary has received instruments of ratification, acceptance or approval thereof from all the Members of the Commission.

4. Such amendment shall thereafter enter into force as to any other Contracting Party when notice of ratification, acceptance or approval by it has been received by the Depositary. Any such Contracting Party from which no such notice has been received within a period of one year from the date of entry into force of the amendment in accordance with paragraph 3 above shall be deemed to have withdrawn from this Convention.

ARTICLE XXXI

1. Any Contracting Party may withdraw from this Convention on 30 June of any year, by giving written notice not later than 1 January of the same year to the Depositary, which, upon receipt of such a notice, shall communicate it forthwith to the other Contracting Parties.

2. Any other Contracting Party may, within sixty days of the receipt of a copy of such a notice from the Depositary, give written notice of withdrawal to the Depositary in which case the Convention shall cease to be in force on 30 June of the same year with respect to the Contracting Party giving such notice.

3. Withdrawal from this Convention by any Member of the Commission shall not affect its financial obligations under this Convention.

ARTICLE XXXII

The Depositary shall notify all Contracting Parties of the following:

(a) Signatures of this Convention and the deposit of instruments of ratification, acceptance, approval or accession;

(b) The date of entry into force of this Convention and of any amendment thereto.

ARTICLE XXXIII

1. This Convention, of which the English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Government of Australia which shall transmit duly certfied copies thereof to all signatory and acceding Parties.

2. This Convention shall be registered by the Depositary pursuant to Article 102 of the Charter of the United Nations.

Drawn up at Canberra this twentieth day of May 1980.

In witness whereof the undersigned, being duly authorized, have signed this Convention.

ANNEX FOR AN ARBITRAL TRIBUNAL

The arbitral tribunal referred to in paragraph 3 of Article XXV shall be composed of three arbitrators who shall be appointed as follows:

The Party commencing proceedings shall communicate the name of an arbitrator to the other Party which, in turn, within a period of forty days following such notification, shall communicate the name of the second arbitrator. The Parties shall, within a period of sixty days following the appointment of the second arbitrator, appoint the third arbitrator, who shall not be a national of either Party and shall not be of the same nationality as either of the first two arbitrators. The third arbitrator shall preside over the tribunal.

If the second arbitrator has not been appointed within the prescribed period, or if the Parties have not reached agreement within the prescribed period on the appointment of the third arbitrator, that arbitrator shall be appointed, at the request of either Party, by the Secretary-General of the Permanent Court of Arbitration, from among persons of international standing not having the nationality of a State which is a Party to this Convention.

The arbitral tribunal shall decide where its headquarters will be located and shall adopt its own rules of procedure.

The award of the arbitral tribunal shall be made by a majority of its members, who may not abstain from voting.

Any Contracting Party which is not a Party to the dispute may intervene in the proceedings with the consent of the arbitral tribunal.

The award of the arbitral tribunal shall be final and binding on all Parties to the dispute and on any Party which intervenes in the proceedings shall be complied with without delay. The arbitral tribunal shall interpret the award at the request of one of the Parties to the dispute or of any intervening Party.

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the expenses of the tribunal, including the remuneration of its members, shall be borne by the Parties to the dispute in equal shares.

ARGENTINA

AUSTRALIA

David Thomson

BELGIUM

CHILE

FRANCE

GERMAN DEMOCRATIC REPUBLIC

GERMANY, FEDERAL REPUBLIQUE OF

JAPAN

NEW ZEALAND

NORWAY Torleiv Anda

POLAND

THE REPUBLIC OF SOUTH AFRICA

UNION OF SOVIET SOCIALIST REPUBLICS

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

THE UNITED STATES OF AMERICA

I hereby certify that the foregoing text is a true copy of the Convention on the Conservation of Antarctic Marine Living Resources drawn up at Canberra on 20 May 1980.

24 SEP 1980

Assistant Secretary
Legal and Treaties Division,
Department of Foreign Affairs
of Australia.

CONFERENCE ON THE CONSERVATION OF ANTARCTIC MARINE LIVING RESOURCES CANBERRA, 7—20 MAY 1980—FINAL ACT

The Governments of Argentina, Australia, Belgium, Chile, The French Republic, German Democratic Republic, Germany, Federal Republic of Japan, New Zealand, Norway, Poland, The Republic of South Africa, The Union of Soviet Socialist Republics, The United Kingdom of Great Britain and Northern Ireland, and The United States of America; having accepted the invitation extended to them by the Government of Australia to participate in a Conference on the Conservation of Antarctic Marine Living Resources, appointed their representatives, advisers and observers who are listed below:

ARGENTINA

Representatives.—His Excellency, Ambassador Angel Maria Oliveri Lopez, Director-General of Antarctica and Malvinas, Ministry of Foreign Affairs, Buenos Aires.

Alternate Representative.—His Excellency, Minister Ricardo Pedro Quadri, Ministry of Foreign Affairs, Buenos Aires.

Delegates.—First Secretary, Joaquin Daniel Otero, Ministry of Foreign Affairs, Buenos Aires.

Third Secretary, Bernardo Fernandez Da Silva, Ministry of Foreign Affairs, Buenos Aires.

Advisers.—Air General (R) Cesar Miguel Comes, National Director of Antarctic, Ministry of Defence, Buenos Aires.

Rear Admiral (R) Alberto Oscar Casellas, Secretary of Marine Affairs, Buenos Aires.

Rear Admiral (R) Cesar A. Castagna, Navy General Headquarters, Buenos Aires.

Lieutenant Colonel Julio V. Fuscaldo, Antarctic Department, Army General Headquarters, Buenos Aires.

Vice-Commodore (R) Oscar Campos, National Directorate of Antarctic, Ministry of Defence, Buenos Aires.

Dr. Eduardo Robustiano Marenco, Ministry of Defence, Buenos Aires.

Secretary.—Miss Celia Margarita Chacon, Ministry of Foreign Affairs, Buenos Aires.

AUSTRALIA

Representative.—Mr. J. E. Ryan, OBE, Deputy Secretary, Department of Foreign Affairs, and subsequently, His Excellency Mr. K. G. Brennan, AO, Australian Ambassador to Switzerland.

Alternate Representatives.—Mr. G. A. Brennan, Assistant Legal Adviser, Department of Foreign Affairs.

Mr. M. J. McKeown, International Legal Branch, Department of Foreign Affairs.

Mr. J. Carlson, Oil and Gas Division, Department of National Development and Energy.

M. C. G. McCue, Acting Director, Antarctic Division, Department of Science and the Environment.

Mr. H. Jitts, Marine Science Branch, Department of Science and the Environment.

Mr. H. Burmester, Principal Legal Officer, Attorney-General's Department.

Dr. K. R. Kerry, Antarctic Division, Department of Science and the Environment.

Mr. B. J. Walker, Policy Division, Department of Science and the Environment.

Mr. M. Sturman, Policy Branch, Fisheries Division, Department of Primary Industry.

Mr. A. Caton, Acting Director, Resource Management Section, Department of Primary Industry.

Mr. J. Bailey, Economic Division, Department of Foreign Affairs.

Dr. G. Baines, Australian National Parks and Wildlife Service.

Mr. G. Kazs, Education and Science Branch, Department of Finance.

Mr. N. Bridger, Government and Legal Branch, Department of the Prime Minister and Cabinet.

Mr. D. C. McEwan, Policy Division, Department of Science and the Environment.

Mr. D. J. Mason, Legal and Treaties Division, Department of Foreign Affairs.

Parliamentary Advisers.—Senator J. Knight, Senator K. W. Sibraa, Mr. M. Baillieu, MP, and Mr. R. Jacobi, MP.

Advisers.—Mr. A. J. Harrison, Chairman of the Commonwealth/States Standing Committee on Fisheries.

Mr. M. Kennedy, Representative of the Australian Conservation, Foundation and Friends of the Earth.

BELGIUM

Representative.—Professor A. van der Essen, Minister, Ministry of Foreign Affairs.

Alternate Representative.—Mr. M. J. Couvreur, First Secretary, Belgian Embassy, Canberra.

CHILE

Representative.—His Excellency Sr Nicolas Novoa, Ambassador on Special Mission, Santiago.

Alternate Representatives.—His Excellency Sr Jorge Vildovinos, Ambassador, Embassy of the Republic of Chile, Canberra.

Delegates.—Sr Juan Fontecilla, Head of the Antarctic Department, Directorate of State Boundaries and Limits, Ministry of Foreign Relations, Santiago.

Sr Carlos Crohare, Head of Antarctic Division, Directorate of Special Politics, Ministry of Foreign Relations, Santiago.

Sr Celso Moreno, Counsellor, Embassy of the Republic of Chile, Canberra.

Advisers.—Sr. Roberto Cabezas, Director, Institute of Fisheries Development, Economic Ministry, Santiago.

FRANCE

Representative.—Mr. Rémy Teissier du Cros, Minister Plenipotentiary.

Delegation.—Mr. Daniel Hery, Deputy Director, Maritime Fisheries, Ministry of Transport.

Miss Josiane Couratier, Secretary of Foreign Affairs, Legal Affairs Division, Ministry of Foreign Affairs.

Mr. Gerard Boivineau, Second Secretary, Embassy of France, Canberra.

Adviser.—Mr. Jean Paul Bloch, Director of Research, Secretariat of State of Overseas Departments and Territories.

GERMAN DEMOCRATIC REPUBLIC

Representative.—His Excellency Dr. Gerhard Lindner, Ambassador Extraordinary and Plenipotentiary of German Democratic Republic to Australia.

Alternate Representatives.—Dr. R. Poser, First Secretary, Embassy of the German Democratic Republic, Canberra.

Dr. W. Ranke, Ministry of Regionally Administrated and Foodstuff Industries.

GERMANY, FEDERAL REPUBLIC OF

Representative.—Dr. Heinz W. Dittmann, Ambassador Extraordinary and Plenipotentiary of the Federal Republic of Germany to Chile.

Alternate Representative.—Mr. Norbert Kleeschulte, Counsellor, Federal Ministry of Agriculture and Forestry, Bonn.

Dr. Arnold, Counsellor, Federal Ministry for Research and Technology, Bonn.

Mr. Ingo Radcke, First Secretary, Embassy of the Federal Republic of Germany, Canberra.

Mrs. Hubertine Steinhausen, Assistant Attache, Embassy of the Federal Republic of Germany, Canberra.

JAPAN

Representative.—His Excellency Mr. Mizuo Kuroda, Ambassador Extraordinary and Plenipotentiary of Japan to Australia.

Alternate Representative.—Mr. Chusei Yamada, Deputy Director-General, Treaties Bureau, Ministry of Foreign Affairs.

Mr. Takashi Tajima, Counsellor (Political), Embassy of Japan.

Mr. Fiji Kusano, Counsellor (Agriculture, Forestry and Fisheries), Embassy of Japan.

Advisers.—Mr. Tokuya Kikuchi, Assistant Director, International Affairs Division, Oceanic Fishery Department, Fishery Agency.

Mr. Keitaro Sato, First Secretary, Embassy of Japan.

Mr. Jun Yokota, Deputy Director, International Conventions Division, Treaties Bureau, Ministry of Foreign Affairs.

Mr. Kunio Shimizu, Deputy Director, Fishery Division, Economic Affairs Bureau, Ministry of Foreign Affairs.

Mr. Seigi Hinata, First Secretary, Embassy of Japan.

NEW ZEALAND

Representative.—Mr. W. R. Mansfield, Head, Legal Division, Ministry of Foreign Affairs, Wellington.

Alternate Representative.—Mr. A. E. Mattheson, First Secretary, New Zealand High Commission.

NORWAY

Representative.—His Excellency Mr. Torleiv Anda, Ambassador.

Alternate Representative.—Mr. H. O. Oestgaard, Head of Division, Department of Polar Affairs, Ministry of Justice and Police.

POLAND

Representative.—His Excellency Mr. Ryszard Frackiewicz, Ambassador Extraordinary and Plenipotentiary of the Polish People's Republic in Australia.

Alternate Representative.—Mr. Janusz Mickiewicz, Director of the Legal and Treaties Department, Ministry for Foreign Affairs, Warsaw.

Delegates.—Mr. Jan Piechura, Ph. D., Deputy Director, Sea Fisheries Institute, Gdynia.

Mr. Marek Zelazko, Legal Adviser, Ministry for Foreign Trade and Marine Economy, Warsaw.

SOUTH AFRICA

Representative.—Mr. P. F. Theron, Secretary for Industries, Pretoria.

Alternate Representatives.—Mr. P. D. Oelofsen, Senior Law Adviser, Department of Foreign Affairs and Information, Pretoria.

Mr. T. F. Wheeler, Under-Secretary, Department of Foreign Affairs and Information, Pretoria.

Mr. G. H. Stander, Director of Seafisheries, Department of Agriculture and Fisheries, Cape Town.

Mr. H. F. Van Zyl, Third Secretary, South African Embassy, Canberra.

U.S.S.R.

Representative.—Dr. Y. M. Rybakov, Head of Treaties and Legal Department, Ministry of Foreign Affairs.

Alternate Representatives.—Dr. V. V. Golitsin, Head of Division of Public International Law, Treaties and Legal Department, Ministry of Foreign Affairs.

Dr. T. G. Lubimova, All Union Scientific Institute on Fishery and Oceanographic Research, Ministry of Fisheries.

Dr. V. K. Zilanov, Deputy Head of Foreign Relations Department, Ministry of Fisheries.

Adviser.—L. A. Raina, Counsellor, Embassy of the U.S.S.R., Canberra.

Secretary.—Miss Ludmila P. Pichugina, Legal and Treaty Department, Ministry of Foreign Affairs.

UNITED KINGDOM

Representative.—Sir Donald Logan K.C.M.G., Foreign and Commonwealth Office, London.

Alternate Representatives.—Dr. John A. Heap, Head, Polar Regions Section, Foreign and Commonwealth Office, London.

Mr. David Edwards, Legal Adviser, Foreign and Commonwealth Office, London.

UNITED STATES

Representative.—Morris D. Busby, Acting Deputy Assistant Secretary for Oceans and Fisheries Affairs, Department of State.

Alternate Representatives.—R. Tucker Scully, Acting Director, Office of Oceans and Polar Affairs, Department of State.

Carmen J. Blondin, Director, Office of International Fisheries Affairs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

David Colson, Office of the Legal Adviser, Department of State.

Advisers.—Joseph E. Bennett, Division of Polar Programs, National Science Foundation.

Robert J. Hofman, Scientific Program Director, Marine Mammal Commission.

Alan F. Ryan, Foreign Affairs Officer, Office of International Fisheries Affairs, National Marine and Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

Private Sector Advisers.—James N. Barnes, Center for Law and Social Policy, Washington, D.C.

Katherine Green Hammond, Ecosystem Modeling and Simulation, El Paso, Texas.

The following international organisations were invited by the Government of Australia to participate as observers in the Conference and appointed their delegations as follows:

EUROPEAN COMMUNITIES

Representatives.—Mr. M. Marcussen, Head of Division, Commission of the European Communities.

Professor J. H. J. Bourgeois, Legal Adviser, Commission of the European Communities.

Advisers

Representatives of the members of the Council of the European Communities.—Mr. T. M. Kasteel, Acting representative of the Presidency of the Council of the European Communities, Counsellor.

Mr. M. Gormsen, First Secretary.

General Secretariat of the Council of the European Communities.—Professor Daniel Vignes, Director, Legal Service.

Mr. Erik Stein, Principal Administrator, Directorate General of External Relations.

Mrs. M. Gilot-Koehler, Secretary.

FOOD AND AGRICULTURE ORGANISATION

Mr. Michel Savini, Regional Fisheries Law Adviser, Fisheries Department.

INTER-GOVERNMENTAL OCEANOGRAPHIC COMMISSION

Mr. R. C. Griffiths, Assistant Secretary.

INTERNATIONAL UNION FOR THE CONSERVATION OF NATURE AND NATURAL RESOURCES

Mr. Robert Boote, Vice-President and Regional Councillor.
Dr. D. F. McMichael, Treasurer and Regional Councillor.

INTERNATIONAL WHALING COMMISSION

Professor J. D. Ovington, Australian Commissioner to the I.W.C.

SCIENTIFIC COMMITTEE ON ANTARCTIC RESEARCH

Dr. David Tranter, CSIRO, Division of Fisheries and Oceanography.

SCIENTIFIC COMMITTEE ON OCEANIC RESEARCH

Dr. G. Humphrey, University of Sydney.

The Conference met at Canberra on 7 May 1980 under the Chairmanship of Mr. J. E. Ryan, Representative of the delegation of Australia. The Secretary-General was Mr. R. H. Wyndham.

A Drafting Committee established under the Rules of Procedure of the Conference was constituted as follows:

Mr. David Edwards, United Kingdom, (Chairman)
His Excellency, Minister Ricardo Pedro Quadri, Argentina
Senor Joaquin Daniel Otero, Argentina
Mr. John Bailey, Australia
Senor Juan Fontecilla, Chile
Senor Celso Moreno, Chile
Miss Josiane Couratier, France
Mr. Gerard Boivineau, France
Mr. Jun Yokota, Japan
Mr. P. D. Oelofsen, South Africa
Dr. V. V. Golitsin, U.S.S.R.
Mr. David Colson, U.S.A.

The Final Session was held on 20 May 1980. As a result of its deliberations the Conference has established and drawn up for signature a "Convention on the Conservation of Antarctic Marine Living Resources" the text of which is annexed hereto.

The Conference also decided to include in the Final Act the text of the following statement made by the Chairman on 19 May 1980 regarding the application of the Convention on the Conservation of Antarctic Marine Living Resources to the waters adjacent to Kerguelen and Crozet over which France has jurisdiction and to waters adjacent to other islands within the area to which this Convention applies over which the existence of State sovereignty is recognized by all Contracting Parties.

"1. Measures for the conservation of Antarctic marine living resources of the waters adjacent to Kerguelen and Crozet, over which

France has jurisdiction, adopted by France prior to the entry into force of the Convention, would remain in force after the entry into force of the Convention until modified by France acting within the framework of the Commission or otherwise.

"2. After the Convention has come into force, each time the Commission should undertake examination of the conservation needs of the marine living resources of the general area in which the waters adjacent to Kerguelen and Crozet are to be found, it would be open to France either to agree that the waters in question should be included in the area of application of any specific conservation measure under consideration or to indicate that they should be excluded. In the latter event, the Commission would not proceed to the adoption of the specific conservation measure in a form applicable to the waters in question unless France removed its objection to it. France could also adopt such national measures as it might deem appropriate for the waters in question.

"3. Accordingly, when specific conservation measures are considered within the framework of the Commission and with the participation of France, then:

(a) France would be bound by any conservation measures adopted by consensus with its participation for the duration of those measures. This would not prevent France from promulgating national measures that were more strict than the Commission's measures or which dealt with other matters;

(b) In the absence of consensus, France could promulgate any national measures which it might deem appropriate.

"4. Conservation measures, whether national measures or measures adopted by the Commission. in respect of the waters adjacent to Kerguelen and Crozet, would be enforced by France. The system of observation and inspection foreseen by the Convention would not be implemented in the waters adjacent to Kerguelen and Corzet except as agreed by France and in the manner so agreed.

"5. The understandings, set forth in paragraph 1-4 above, regarding the application of the Convention to waters adjacent to the Islands of Kerguelen and Crozet, also apply to waters adjacent to the islands within the area to which this Convention applies over which the existence of State sovereignty is recognized by all Contracting Parties."

No objection to the statement was made.

II

The Conference on the Conservation of Antarctic Marine Living Resources,

Noting that a definitive regime for the conservation of Antarctic marine living resources has been elaborated, and desiring to have that regime enter into force as quickly as possible;

Recognizing that harvesting of Antarctic marine living resources is presently taking place and underlining the importance of the objectives of the Convention on the Conservation of Antarctic Marine Living Resources;

Recognizing the need to identify, emphasize and co-operate in carrying out research activities that will facilitate the effective operation of the Convention;

Desiring further to facilitate the implementation of the Convention by emphasizing and co-ordinating the collection of scientific and fisheries data needed for the Scientific Committee to be constituted under the terms of the Convention to begin effective work upon entry into force of the Convention;

Calls upon the Parties entitled to become Members of the Commission

1. To take all possible steps to bring the Convention on the Conservation of Antarctic Marine Living Resources into force as soon as possible;

2. To show the greatest possible care and concern, bearing in mind the principles and objectives of Article II of the Convention, in any harvesting of Antarctic marine living resources in the period prior to entry into force of the Convention and examination of the status of stocks by the Scientific Committee to be established by the Convention on the Conservation of Antarctic Marine Living Resources;

3. To the greatest extent practicable and feasible to co-operate broadly and comprehensively in the continued development of the scientific and fisheries data necessary for the effective operation of the Convention on the Conservation of Antarctic Marine Living Resources, and to this end:

(a) to intensify research related to Antarctic marine living resources;

(b) to identify the specific scientific and fisheries data needed and how those data should be collected and recorded to facilitate the work of the Scientific Committee to be established by the Convention; and

(c) to compile scientific and fisheries data identified pursuant to sub-paragraph (b) above in order to distribute those data to the Contracting Parties upon entry into force of the Convention on the Conservation of Antarctic Marine Living Resources.

III

The Conference on the Convention for the Conservation of Antarctic Marine Living Resources,

Having agreed on a text of a Convention which would establish a Commission and Scientific Committee for the Conservation of Antarctic Marine Living Resources and an Executive Secretariat;

Recognising the need to examine working methods for the Executive Secretary and Secretariat so that they may begin their work as soon as possible after entry into force of the Convention;

Takes note of the intention of the Depositary to convene a meeting of representatives of Parties entitled to become Members of the Commission within one year after expiration of the period during which the Convention is open for signature for the purpose of considering steps which might be taken to facilitate the early operation of the Commission, Scientific Committee and Executive Secretariat when these bodies are established.

IV

The Conference on the Conservation of Antarctic Marine Living Resources resolves:

1. To express its gratitude to the Australian Government for its initiative in convening the present Conference and for its preparation;

2. To express to its Chairman, Mr. J. E. Ryan, its deep appreciation for the admirable manner in which he has guided the Conference;

3. To express to the officers and staff of the Secretariat its appreciation for their untiring efforts in contributing to the attainment of the objectives of the Conference.

V

The Conference on the Conservation of Antarctic Marine Living Resources resolves:

That the Government of Australia be authorised to publish the Final Act of this Conference and the text of the Convention annexed hereto.

VI

The Conference on the Conservation of Antarctic Marine Living Resources resolves:

To express its deep appreciation to the Australian Government for its offer to provide a site for the Headquarters of the Commission to be established under the Convention.

Done at Canberra, this Twentieth Day of May 1980, in a single original copy to be deposited in the archives of the Government of Australia which will transmit a certified copy thereof to all the other Participants in the Conference.

In witness whereof, the following representatives have signed this Final Act.

ARGENTINA

AUSTRALIA

Ralph Jacobi M.P.

Christopher Puplick - Senator

BELGIUM

CHILE

FRANCE

Rémy Teissier du Cros

J. [illegible]

GERMAN DEMOCRATIC REPUBLIC

The delegation of the German Democratic Republic expresses its view that the inclusion into the Convention on the Conservation of Antarctic Marine Living Resources of the provisions which allow that regional economic integration organizations may become Parties to this convention does not change the position of the G.D.R. with regard to such international organizations.

Dr. [illegible]

GERMANY, FEDERAL REPUBLIC OF

H. W. Dittmann

JAPAN

Takashi Tajima

Eiji Kusano

NEW ZEALAND

N.Z. N-C.

A E Matthews

Hans Olav Østgaard

POLAND

THE REPUBLIC OF SOUTH AFRICA

UNION OF SOVIET SOCIALIST REPUBLICS

DECLARATION BY THE DELEGATION OF THE U.S.S.R. WHEN SIGNING THE FINAL ACT OF THE CONFERENCE OF ANTARCTIC MARINE LIVING RESOURCES

The Soviet delegation considers it necessary to state that the affording to organizations of regional economic integration of the possibility of becoming parties to the Convention on the Conservation of Antarctic Marine Living Resources does not alter the position of the Soviet Union with respect to the various international organizations.

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Donald Logan

John A. Heap.

THE UNITED STATES OF AMERICA

M D Busby

Richard Tucker Scully

David A Colson

Carmen Joseph Blondin

I Certify That the following is a true copy of the Final Act of the Conference on the Conservation of Antarctic Marine Living Resources signed at Canberra on 20 May 1980 in the English, French, Russian and Spanish languages, the signed original of which is deposited in the archives of the Government of Australia.

In Witness Whereof, I William Harry Bray, Assistant Secretary, Legal and Treaties Division, Department of Foreign Affairs of Australia, have hereunto caused the seal of the Department of Foreign Affairs to be affixed at Canberra, this twenty-first day of May 1980.

WM. BRAY,
Assistant Secretary,
Legal and Treaties Division.

○

96th Congress
2d Session
SENATE
Executive
Y

TAX CONVENTION WITH THE PEOPLE'S REPUBLIC OF BANGLADESH

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH A RELATED EXCHANGE OF NOTES, SIGNED AT DACCA ON OCTOBER 6, 1980

DECEMBER 2, 1980.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1980

82-014 O--82----1 (Pt. 10) BLR

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 2, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the People's Republic of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Dacca on October 6, 1980.

The Convention, in general, follows the pattern of the United States model income tax convention, with a few departures from the model to accommodate Bangladesh's status as a developing country.

The Convention differs in one major respect from other recent United States tax treaties, including those with developing countries. In most of these treaties a source country exemption is provided for shipping and aircraft operating income. The convention with Bangladesh, however, provides exemption for aircraft income only; shipping income is taxable under the internal laws of the two Contracting States.

The exchange of notes sets out certain understandings between the two governments.

I recommend that the Senate give early and favorable consideration to the Convention and give advice and consent to ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 17, 1980.

THE PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the Government of the United States of America and the Government of the People's Republic of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (the Convention), together with a related exchange of notes, signed at Dacca on October 6, 1980.

This will be the first income tax convention between the United States and Bangladesh and is viewed as an important step towards the expansion of economic relations between the two countries.

The Convention generally follows the pattern of the United States model income tax convention, although there are a number of deviations from the model to accommodate Bangladesh's status as a developing country. For example, the Convention provides that business profits of an enterprise of one country may be taxed by the other only if they are attributable to a permanent establishment in the other country. However, the definition of a permanent establishment is more broadly drawn in the Convention than in the United States model.

The Convention differs in one major respect from other recent United States tax treaties, including those with developing countries. Most of these treaties provide a source country exemption for both shipping and aircraft operating income. In the convention with Bangladesh, however, only aircraft income is exempt; shipping income is taxable under the internal laws of the two Contracting States. Bangladesh insisted on retaining its right to tax shipping profits arising in Bangladesh.

Maximum rates of tax are established on a reciprocal basis for the taxation by the source country of dividends, interest and royalties, which, in general, exceed the rates specified in the United States model. The rates, however, are consistent with those established in other United States treaties with developing countries. For dividends, the maximum rate, in general, is 25 percent, although a lower, 15 percent, rate is provided for subsidiary dividends.

Interest is taxable at the source at a maximum rate of 15 percent, except that interest received by a Contracting State or instrumentality is exempt. Artistic royalties, including motion pictures, are subject to a maximum rate of tax at source of 10 percent, while the rate for industrial royalties is 15 percent.

The Convention, with minor deviations from the model provisions, contains the usual rules relating to real property income, capital gains, the treatment of students, teachers, pensioners and government employees, nondiscrimination, and administrative cooperation.

The exchange of notes provides that the United States is prepared to reopen discussions with Bangladesh, when circumstances permit, with a view to incorporating provisions into the Convention which would create incentives to promote the flow of capital to Bangladesh.

The Convention will enter into force upon the exchange of instruments of ratification and its provisions will have effect as follows:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force,

(b) in respect of other taxes, to taxable periods in the United States and income years in Bangladesh beginning on or after the first day of January next following the date on which the Convention enters into force.

The Convention will remain in force for at least five years and will remain in force thereafter unless terminated by one of the parties by giving at least six months' notice through diplomatic channels.

A technical memorandum explaining the provisions of the Convention will be prepared by the Department of the Treasury and submitted to the Senate Foreign Relations Committee.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted,

EDMUND S. MUSKIE.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United States of America and the Government of the People's Republic of Bangladesh, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

1. Except as otherwise provided in this Convention, this Convention shall apply to persons who are residents of one or both of the Contracting States.

2. Notwithstanding any provision of this Convention except paragraph 3 of this Article, a Contracting State may tax its residents (as determined under Article 4 (Fiscal Domicile)), and by reason of citizenship may tax its citizens, as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss.

3. The provisions of paragraph 2 shall not affect:

(a) the benefits conferred by a Contracting State under paragraphs 1(b) and 3 of Article 18 (Pensions, etc.), Articles 22 (Relief From Double Taxation), 23 (Non-Discrimination), and 24 (Mutual Agreement Procedure); and

(b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Teachers, Students and Trainees) and 26 (Effect of Convention on Diplomatic Agents and Consular Officers, Domestic Laws, and Other Treaties), upon individuals who are neither citizens of, nor have immigrant status in, that State.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State.

2. The existing taxes to which this Convention shall apply are:

(a) In the United States: the Federal income taxes imposed by the Internal Revenue Code and the tax on insurance premiums paid to foreign insurers (but only to the extent that the relevant risk is not reinsured, directly or indirectly, with a person not entitled to relief from such tax), but excluding the accumulated earnings tax and the personal holding company tax.

(b) In Bangladesh: the income tax and the super tax.

3. The Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, or judicial decisions.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purpose of this Convention, unless the context otherwise requires:

(a) the term "person" includes an individual, a partnership, a company, an estate, a trust, and any other body of persons;

(b) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(c) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(d) the term "international traffic" means any transport by a ship or aircraft, except where such transport is solely between places in the other Contracting State;

(e) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate, and

(ii) in Bangladesh: the National Board of Revenue or their authorized representative;

(f) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

(g) the term "Bangladesh" means the People's Republic of Bangladesh;

(h) The term "national" means:

(i) in relation to Bangladesh all individuals possessing the nationality of Bangladesh and all legal persons, partnerships and associations deriving their status as such from the laws in force in Bangladesh; and

(ii) in relation to the United States all individuals possessing the citizenship of the United States of America and all legal persons, partnerships and associations deriving their status as such from the laws in force in the United States.

2. As regards the application of this Convention by a Contracting State any term not defined herein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

Article 4

FISCAL DOMICILE

1. For purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that:

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate or trust is subject to tax as the income of a resident of that State, either in its hands or in the hands of its partners or beneficiaries.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his or her status shall be determined as follows:

(a) The individual shall be deemed to be a resident of the State in which he or she has a permanent home available; if such individual has a permanent home available in both States, or in neither State, he or she shall be deemed to be a resident of the State with which his or her personal and economic relations are closer (center of vital interests);

(b) If the State in which the individual's center of vital interest cannot be determined, he or she shall be deemed to be a resident of the State in which he or she has an habitual abode;

(c) If the individual has an habitual abode in both States or in neither of them, he or she shall be deemed to be a resident of the State of which he or she is a national;

(d) If the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created or organized under the laws of a Contracting State or a political subdivision thereof, it shall be treated as a resident of that State.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to settle the question and to determine the mode of application of the Convention to such person.

5. Where under any provision of this Convention income arising in one of the Contracting States is relieved from tax in that Contracting State and, under the law in force in the other Contracting State a person, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is re-

mitted to or received in the other Contracting State during the year such income accrues.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop;
(f) a store or other sales outlet;
(g) a warehouse; and
(h) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig used for the exploration or development of natural resources, constitutes a permanent establishment only if it lasts more than 183 days.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or mechandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e) provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include the use of facilities or the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of occasional delivery of such goods or merchandise.

6. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph 7 of this Article applies—shall be deemed to be a permanent establishment in the first-mentioned State if:

(a) he has, and habitually exercises, in the first-mentioned State, a general authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those described in either paragraph 4 or paragraph 5; or

(b) he has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise and additional activities conducted in that State on behalf of the enterprise have contributed to the conclusion of the sale of such goods or merchandise.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY (REAL PROPERTY)

1. Income derived by a resident of a Contracting State from immovable (real) property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture, forestry and fishery, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

BUSINESS PROFITS

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business

in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in that other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions those expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the business profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of this Convention, "business profits" means income derived from any trade or business whether carried on by an individual, company or any other person, or group of persons, including the rental of tangible personal (movable) property.

8. The United States tax on insurance premiums paid to foreign insurers shall not be imposed on insurance or reinsurance premiums which are the receipts of a business of insurance carried on by a resident of Bangladesh whether or not that business is carried on through a permanent establishment in the United States (but only to the extent that the relevant risk is not reinsured, directly or indirectly, with a person not entitled to relief from such tax).

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation in international traffic of aircraft shall be taxable only in that State.

2. For purposes of this Article, profits from the operation in international traffic of aircraft include profits derived from the rental on a full or bareboat basis of aircraft if operated in international traffic

by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

4. Subject to the provisions of Article 23 (Non-Discrimination), nothing in this Convention shall affect the right of a Contracting State to tax, in accordance with domestic laws, profits derived by a resident of the other Contracting State from sources within the first-mentioned Contracting State from the operation of ships in international traffic.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment or allocation of income, deductions, credits, or allowances between persons owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such persons.

ARTICLE 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed by both Contracting States.

2. However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged in the first-mentioned Contracting State shall not exceed:

(a) 15 percent of the gross amount of the dividends if the beneficial owner is a company which owns, directly or indirectly, at least 10 percent of the voting stock of the company paying the dividends;

(b) 25 percent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

ARTICLE 11

INTEREST

1. Interest derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

2. Interest derived and beneficially owned by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of 15 percent of the gross amount of such interest.

3. Notwithstanding the provisions of paragraphs 1 and 2 interest derived by one of the Contracting States, or an instrumentality thereof (including the Bangladesh Bank, the Federal Reserve Banks of the United States, the Export-Import Bank of the United States, the Overseas Private Investment Corporation of the United States, and such other institutions of either Contracting State as the competent authorities of both Contracting States may determine by mutual agreement) shall be exempt from tax by the other Contracting State.

4. The provisions of paragraphs 2 and 3 shall not apply if the recipient of interest from sources within one of the Contracting States, being a resident of the other Contracting State, carries on business in the first-mentioned Contracting State through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the debt-claim

in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where an amount is paid to a related person and would be treated as interest but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such a case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

6. The term "interest" as used in this Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises, including interest on deferred payment sales.

ARTICLE 12

ROYALTIES

1. Royalties derived by a resident of one of the Contracting States from sources within the other Contracting State may be taxed by both Contracting States.

2. Royalties derived and beneficiary owned by a resident of one of the Contracting States from sources within the other Contracting State shall not be taxed by the other Contracting State at a rate in excess of:

(a) In the case of royalties described in subparagraph (a) of paragraph 3 of this Article, 10 percent of the gross amount of such royalties; and

(b) 15 percent of the gross amount of the royalties in all other cases.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use:

(a) any copyright of literary, artistic or scientific work including cinematographic films or films or tapes used for radio or television broadcasting; and

(b) any patent, trade mark, design or model, plan, secret formula or process, or other like right or property, or for information concerning industrial, commercial or scientific experience.

The term "royalties" as described in subparagraphs (a) or (b) also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use, or disposition thereof. However, the term "royalties" does not include any payments in consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties from sources within one of the Contracting

States, being a resident of the other Contracting State, carries on business in the first-mentioned Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. Where, an amount is paid to a related person and would be treated as a royalty but for the fact that it exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the amount as would have been paid to an unrelated person. In such case, the excess amount may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

Article 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 (Income From Immovable Property (Real Property)) and situated in the other Contracting State and of shares of the capital stock of a company the property of which consists principally of such immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State, and gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

Article 14

INDEPENDENT PERSONAL SERVICES

Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and

(a) the individual is present in that other State for a period or periods aggregating more than 90 days in the taxable year concerned, or

(b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities, but only so much of the income as is attributable to that fixed base may be taxed in such other State.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 18 (Pensions, Etc.) and 19 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned,

(b) the remuneration is paid by or on behalf of, an employer who is not a resident of the other State, and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

4. Notwithstanding the other provisions of this Article and Article 14, where a director's fee is paid by a company which is a resident of a Contracting State to an individual who is a resident of the other Contracting State and is a shareholder of the company, and such fee is in excess of the amount which would have been paid for such services to an individual who is not a shareholder of the company, such excess amount may be taxed by the first-mentioned Contracting State at a rate not in excess of 25 percent.

ARTICLE 16

INVESTMENT OR HOLDING COMPANIES

If 25 percent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties under the provisions of its internal law. For the purposes of this Article, the source of dividends, interest or royalties shall be determined in accordance with paragraph 3 (a), (b), or (c) of Article 22 (Relief from Double Taxation).

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by public entertainers such as theater, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised provided that—

(a) such income exceeds 100 United States dollars or its equivalent in Bangladesh taka per day, or

(b) such income exceeds in the aggregate 3,000 United States dollars or its equivalent in Bangladesh taka during the taxable year.

Provided further that such income shall not be taxable in such Contracting State if the visit of the public entertainers or athletes to that State is within the scope of a cultural or sports exchange program agreed to by both the Contracting States.

2. Where income in respect of activities exercised by an entertainer or an athlete in his or her capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), and 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

ARTICLE 18

PENSIONS, ET CETERA

1. Subject to the provisions of paragraph 2 of Article 19 (Government Service):

(a) pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only in that State, and

(b) social security payments and other public pensions paid by a Contracting State to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State.

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2. Annuities beneficially derived by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State by a resident of the other Contracting State shall be exempt from tax in the other Contracting State. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall be exempt from tax in both Contracting States.

Article 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of and a national of that State.

2. (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or authority to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 17 (Artistes and Athletes), and 18 (Pensions, etc.), as the case may be, shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

TEACHERS, STUDENTS AND TRAINEES

1. Remuneration which a professor or teacher who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State for the purpose of teaching or research in a university, college, school, or other recognized educational institution receives for such work shall

not be taxed in that other State for a period not exceeding two years, in respect of that remuneration.

2. An individual who was a resident of a Contracting State immediately before visiting the other Contracting State and is temporarily present in that other State for the primary purpose of—

(a) studying at a university, college, school or other recognized educational institution in that other State, or

(b) securing training as a business or technical apprentice, or

(c) studying or doing research as a recipient of a grant allowance or award from a governmental, religious, charitable, or educational organization,

shall, from the date of his or her first arrival in that other State in connection with that visit, be exempt from tax in that other State with respect to—

(d) all remittances from abroad for purposes of his or her maintenance, education or training;

(e) the grant, allowance, or award, and

(f) any remuneration for personal services rendered in that other Contracting State with a view to supplementing the resources available to him or her for such purposes in an amount not in excess of 4500 United States dollars or its equivalent in Bangladesh taka for any taxable year.

In the case of an individual described in subparagraph (b), this exemption from tax shall apply for a period not exceeding two years from the date of the individual's first arrival in the other State.

ARTICLE 21

OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. Notwithstanding paragraph 1, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may be taxed in that other State.

ARTICLE 22

RELIEF FROM DOUBLE TAXATION

1. In the case of the United States, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax the appropriate amount of tax paid to Bangladesh; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Bangladesh from which it receives dividends in any taxable year, the United States shall allow credit for the appropriate amount of tax paid to Bangladesh by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall

be based upon the amount of tax paid to Bangladesh, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside the United States) provided by United States law for the taxable year. For purposes of applying the United States credit in relation to tax paid to Bangladesh the taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

2. In the case of Bangladesh, double taxation shall be avoided as follows: In accordance with the provisions and subject to the limitations of the law of Bangladesh (as it may be amended from time to time without changing the general principle hereof), Bangladesh shall allow a resident of Bangladesh as a credit against the Bangladesh tax the appropriate amount of tax paid to the United States; and, in the case of a Bangladesh company owning at least 10 percent of the voting stock of a company which is a resident of the United States from which it received dividends in any taxable year, Bangladesh shall allow credit for the appropriate amount of tax paid to the United States by that company with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to the United States, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the Bangladesh tax on income from sources outside of Bangladesh) provided by Bangladesh law for the taxable year. For purposes of applying the Bangladesh credit in relation to tax paid to the United States the taxes referred to in paragraphs 2(a) and 3 of Article 2 (Taxes Covered) shall be considered to be income taxes.

3. For the purpose of the preceding paragraphs of this Article, the source of income or profits shall be determined in accordance with the following rules:

(a) Dividends, as defined in paragraph 3 of Article 10 (Dividends), shall be deemed to arise in a Contracting State if paid by a company which is a resident of that State.

(b) Interest, as defined in paragraph 6 of Article 11 (Interest), shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(c) Royalties, as defined in paragraph 3 of Article 12 (Royalties), shall be deemed to arise in a Contracting State to the extent that such royalties are with respect to the use of, or the right to use, rights or property within that State.

(d) Except for income or profits referred to in subparagraphs (a), (b), or (c) and except for income or profits taxed by the United States solely by reason of citizenship in accordance with paragraph 2 of Article 1 (Personal Scope) and income described in paragraph 2 of Article 21 (Other Income), income or profits derived by a resident of a Contracting States which may be taxed in the other Contracting States in accordance with this Convention shall be deemed to arise in that other Contracting State.

ARTICLE 23

NONDISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. For purposes of United States taxation, United States nationals who are not resident in the United States are not in the same circumstances as Bangladesh nationals who are not resident in the United tSates. This provision shall, notwithstanding the provisions of Article 1 (Personal Scope), also apply to persons who are not residents of either Contracting State.

2. The taxation on a permanent establishment which an enterprise (of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 11 (Interest), or paragraph 5 of Article 12 (Royalties) apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same condition as if they had been paid to a resident of the first-mentioned State. The provisions of this paragraph shall not affect the application of the law of Bangladesh requiring the deduction of tax at source, from interest, royalties and other disbursements as a condition for deduction.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes, which it grants to its own residents.

6. The provisions of this Article shall apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 24

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him or her in taxation not in accordance with the provisions of this Convention, he or she may,

irrespective of the remedies provided by the domestic law of those States, present his or her case to the competent authority of the Contracting State of which he or she is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. If an agreement is reached, it shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree:

(a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits, or allowances between persons, including a uniform position on the application of the requirements of paragraph 2 of Article 23 (Non-Discrimination);

(c) to the same characterization of particular items of income;

(d) to the same application of source rules with respect to particular items of income; and

(e) to a common meaning of a term.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. In cases where this Convention specifies a dollar amount, the competent authorities may agree to a higher dollar amount.

ARTICLE 25

EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the informa-

tion for such purposes in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

Article 26

EFFECT OF CONVENTION ON DIPLOMATIC AGENTS AND CONSULAR OFFICERS, DOMESTIC LAWS, AND OTHER TREATIES.

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded—

(a) by the laws of either Contracting State, or

(b) by any other agreement between the Contracting States.

Article 27

ENTRY INTO FORCE

1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force.

(b) in respect of other taxes, to taxable periods in the United States and income years in Bankladesh beginning on or after the first day of January next following the date on which this Convention enters into force.

Article 28

TERMINATION

1. This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the

Convention at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) In respect of tax withheld at the source, to amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

(b) In respect of other taxes, to taxable periods in the United States and income years in Bangladesh beginning on or after the first day of January next following the expiration of the 6 months' period.

DONE at Dacca in duplicate, this sixth day of October 1980.

DAVID T. SCHNEIDER.

For the Government of the United States of America.

A. K. AZIZUL HUQ.

For the Government of the People's Republic of Bangladesh.

DACCA, BANGLADESH, *October 6, 1980.*

Mr. A. K. AZIZUL HUQ,
Secretary, Internal Resources Division,
Ministry of Finance, Dacca.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and the Government of the People's Republic of Bangladesh for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income which was signed today. The following understandings were reached between our two Governments.

1. During the course of negotiations leading to the conclusion of the Convention signed today, representatives of Bangladesh stressed the need for increased flows of capital to Bangladesh and asked that special measures be included in the Convention to foster such capital flows from the United States.

The United States delegation, though expressing understanding of this position was unable to agree to the inclusion of such a provision. I wish to assure you, however, that my Government recognizes the importance which your Government places on increased investment in Bangladesh. Accordingly, when circumstances permit, my Government will be prepared to resume discussions with a view to incorporating provisions into this Convention that will minimize the interference of the United States tax system with incentives offered by the Government of the People's Republic of Bangladesh and that will be consistent with the income tax policies of the United States regarding the least developed countries.

2. It is our mutual understanding, that in applying Article 7 (Business Profits) to any case where the correct amount of profits attributable to a permanent establishment is incapable of precise determination or the ascertaining thereof presents exceptional difficulties, the profits properly attributable to the permanent establishment may be determined on a reasonable basis.

If this is in accordance with your understanding, I would appreciate an acknowledgement from you to that effect.

Accept, Excellency, the renewed assurances of my highest consideration.

Sincerely yours,

David T. Schneider,

Ambassador of the United States of America in Bangladesh.

Dacca, Bangladesh, *October 6, 1980.*

Mr. David T. Schneider,
Ambassador of the United States of America in Bangladesh.

Excellency: I have the honour to acknowledge the receipt of your Excellency's Note of today's date which reads as follows:

"I have the honour to refer tothe Convention between the Government of the United States of America and the Government of the People's Republic of Bangladesh for Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income which was signed today. The following understandings were reached between our two Governments.

"1. During the course of negotiations leading to the conclusion of the Convention signed today, representatives of Bangladesh stressed the need for increased flows of capital to Bangladesh and asked that special measures be included in the Convention to foster such capital flows from the United States.

"The United States delegation, though expressing understanding of this position was unable to agree to the inclusion of such a provision. I wish to assure you, however, that my Government recognizes the importance which your Government places on increased investment in Bangladesh. Accordingly, when circumstances permit, my Government will be prepared to resume discussions with a view to incorporating provisions into this Convention that will minimize the interference of the United States tax system with incentives offered by the Government of the People's Republic of Bangladesh and that will be consistent with the income tax policies of the United States regarding the least developed countries.

"2. It is our mutual understanding, that in applying Article 7 (Business Profits) to any case where the correct amount of profits attributable to a permanent establishment is incapable of precise determination or the ascertaining thereof presents exceptional difficulties, the profits properly attributable to the permanent establishment may be determined on a reasonable basis.

"If this is in accordance with your understanding, I would appreciate an acknowledgment from you to that effect.

"Accept, Excellency, the renewed assurances of my highest consideration."

2. I have the honour to confirm the above mentioned understanding on behalf of the Government of the People's Republic of Bangladesh.

3. Please accept, Excellency, the assurances of my highest consideration.

A. K. Azizul Huq,

Secretary, Internal Resources Division, Ministry of Finance,
Government of the People's Republic of Bangladesh.

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96TH CONGRESS } SENATE { EXECUTIVE
2d Session } { Z

PROTOCOL AMENDING THE 1971 TAX CONVENTION WITH THE KINGDOM OF NORWAY

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE KINGDOM OF NORWAY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND PROPERTY SIGNED AT OSLO ON DECEMBER 3, 1971, WHICH PROTOCOL WAS SIGNED AT OSLO ON SEPTEMBER 19, 1980

December 2, 1980.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE
79-118 O WASHINGTON : 1980

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *December 2, 1980.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a protocol amending the Convention between the United States of America and the Kingdom of Norway signed at Oslo on December 3, 1971, which Protocol was signed at Oslo on September 19, 1980. I also enclose, for the information of the Senate, the report of the Department of State.

The Protocol modifies the existing convention between the United States and Norway. It takes into account changes in Norway's tax system during the years since the Convention was negotiated and otherwise brings it up to date.

In 1975, Norway amended its corporate tax in several ways to increase the burden of that tax on corporations deriving income from the extraction of offshore oil and gas. The 1975 legislation also added a special tax on income from submarine petroleum resources. Article I of the Protocol clarifies certain questions arising from these changes by providing foreign tax credits with respect to the corporate tax and the special tax, with a limitation for taxpayers subject to the special tax to the amount necessary to offset United States tax on the petroleum income from sources within Norway. This limitation is similar to that contained in the Third Protocol to the income tax convention between the United States and the United Kingdom.

The Convention does not provide specific rules to determine when a country has the right to tax income resulting from the exploration or exploitation of its continental shelf and its natural resources. Article II of the Protocol allows Norway and the United States to impose a tax on income derived from the exploitation or exploration of natural resources on their respective continental shelves after such activities have existed for more than 30 days in a twelve month period. With respect to income from employment in such activities, however, an exemption is provided for wages attributable to sixty days of personal services performed in the taxable year.

In addition, the Protocol modifies the rate of withholding tax at source on dividends and interest and allows the United States to tax gains from the sale of shares in companies whose assets consist principally of United States real property. It also contains other provisions, including a new provision on the tax treatment of entertainers and athletes and clarifies provisions on administrative cooperation.

I recommend that the Senate give early and favorable consideration to the Protocol and give advice and consent to its ratification.

JIMMY CARTER.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, November 13, 1980.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Protocol amending the Convention between the Government of the United States of America and the Kingdom of Norway for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and property signed at Oslo on December 3, 1971, which Protocol was signed at Oslo on September 19, 1980.

The Protocol modifies the existing convention between the United States and Norway. It takes into account changes in Norway's tax system during the intervening years and otherwise brings the Convention up to date.

In 1975, Norway amended its corporate tax in several ways to increase the burden of that tax on corporations deriving income from the extraction of offshore oil and gas. The 1975 legislation also added a special tax on income from submarine petroleum resources. Due to the nature of the 1975 changes and subsequent amendments, it is not clear whether the payments being made to Norway by United States taxpayers engaged in offshore petroleum extraction are eligible for the foreign tax credit in the United States. Article I of the Protocol resolves this issue by providing that foreign tax credits are available with respect to the corporate tax and special surcharge on offshore petroleum income. The amount of credit for taxpayers subject to the special tax is limited, however, to the amount necessary to offset United States tax on the petroleum income from sources within Norway. This per country limitation is similar to the limitation contained in the Third Protocol to the income tax convention between the United States and the United Kingdom.

The existing income tax convention between the United States and Norway does not specify when activities in connection with the exploration or exploitation of a country's continental shelf and its natural resources are sufficient to give that country the right to impose tax, as the country of the source of the income from such activities. Article II of the Protocol allows Norway and the United States to impose tax on income arising from the exploitation or exploration of natural resources on its continental shelf after such activities exist for more than 30 days in a twelve month period. This rule applies to income of employees and independent contractors as well as to corporate profits. In the case of employees, however, an exemption is provided for wages attributable to sixty days of personal services performed in the taxable year.

The Protocol modifies the provisions for the rates of withholding tax at source on dividends and interest. In the case of dividends, the rate of withholding is increased from 10 to 15 percent. Norway has been amending its tax conventions with other countries to assure the uniform application of 15 percent withholding on Norwegian dividends. This increase in Norway's withholding tax is mitigated by Norway's split rate tax system which allows corporations to reduce their Norwegian corporate tax burden by making larger distributions to their shareholders.

The provision in the Convention exempting interest from tax in the country of source is modified by Article V of the Protocol to allow imposition of a 10 percent withholding tax. Interest arising on commercial credit, bank loans, and obligations outstanding on the date of the signature of the Protocol remains, however, exempt from withholding tax. Furthermore, interest generally remains exempt in the country of source unless the other country has legislation in effect which authorizes the taxation of interest paid to nonresidents. Norway does not now have a withholding tax on interest. Thus, at this time, all interest remains exempt from tax at source under Article V of the Protocol.

As in the case of other recent United States tax treaties, the Protocol with Norway contains a provision designed to allow the United States to tax gains derived by residents of Norway from the sale of stock of a corporation, or an interest in a partnership, trust or an estate, in cases where the property of such entities consists principally of United States real estate. Other provisions of the Protocol include a new article on the tax treatment of entertainers and athletes, a technical amendment to the exemption for social security payments made by the other country, and a clarification that former United States citizens who give up their citizenship to avoid United States tax do not benefit from the Convention. Also included is a definition of Norway's obligation to give credits for United States taxes, and provisions to modernize the Mutual Agreement Procedure and Exchange of Information articles of the Convention.

The Protocol will enter into force upon the exchange of instruments of ratification and its provisions will have effect:

(a) In respect of credits against United States tax allowed pursuant to Article I of this Protocol, as of the sixth taxable year preceding January 1 of the year in which the Portocol enters into force;

(b) In respect of tax withheld at the source, to amounts paid on or after the first day of the sixth month next following the date on which the Protocol enters into force;

(c) In respect of other taxes. for taxable years beginning on or after January 1 of the year following the year in which the Protocol enters into force.

A technical memorandum explaining in detail the provisions of the Protocol is being prepared by the Department of the Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted.

EDMUND S. MUSKIE.

Protocol Amending the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, Signed at Oslo on December 3, 1971

The United States of America and the Kingdom of Norway, desiring to conclude a Protocol to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, signed at Oslo on December 3, 1971, have agreed as follows:

ARTICLE I

(1) Paragraph (2) of Article 1 (Taxes Covered) shall be deleted and replaced by the following:

"(2) (a) This Convention shall also apply to:

"(i) taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes after the date of signature of this Convention; and

"(ii) in the case of Norway, the national and municipal taxes on income (including contributions to the tax equalization fund), and the special tax administered under section 5 of the Act of 13 June 1975, No. 35, relating to the taxation of submarine petroleum resources, as in effect on the date of signature of the Protocol to this Convention, and taxes substantially similar thereto enacted after such date.

"(b) The terms 'United States tax' and 'Norwegian tax' used in paragraph (1) are deemed to include, respectively, the taxes imposed by the United States and Norway described in this paragraph (2)."

(2) Paragraph (1) of Article 23 (Relief From Double Taxation), and the introductory language that precedes paragraph (1) of Article 23, shall be deleted and replaced by the following:

"(1) in the case of the United States, double taxation shall be avoided as follows:

"(a) in accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income and appropriate amount of income taxes imposed by Norway; and, in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of Norway from which it receives dividends in any taxable year, the United States shall allow as a credit against the United States tax on income the appropriate amount of income taxes imposed by Norway on the company which is a resident of Norway with respect to the profits out of which such dividends are paid. For purposes of applying the United States credit in relation to taxes paid or accrued to Norway, the Norwegian taxes referred to in paragraphs (1) (b) and

(2) of Article 1 (Taxes Covered) (other than the national and municipal taxes on capital, the municipal tax on real property, and taxes substantially similar to such taxes on capital and real property but imposed by Norway after the date of signature of the Convention) shall be considered to be income taxes, and shall be allowed as a credit against the United States tax on income, subject to the provisions of subparagraph (b).

"(b) The appropriate amount allowed as a credit by the United States shall be based upon the amount of income taxes paid or accrued to Norway. However, the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. In addition, in the case of income taxes paid or accrued to Norway by persons subject to the special tax referred to in subparagraph (2)(a)(ii) of Article 1 (Taxes Covered), or to a substantially similar tax, the appropriate amount allowed as a credit by the United States shall be limited to the amount of income taxes paid or accrued to Norway attributable to Norwegian source taxable income in the following way:

"(i) with respect to income taxes paid or accrued to Norway on oil and gas extraction income from oil or gas wells in Norway, the amount to be allowed as a credit for a taxable year shall not exceed the product of:

"(a) the maximum statutory United States tax rate applicable to a corporation for such taxable year, and

"(b) the amount of such income.

"(ii) further, the lesser of:

"(a) the amount of taxes paid or accrued to Norway on oil and gas extraction income from oil or gas wells in Norway that is not allowable as a credit under subparagraph (i), or

"(b) two percent of such income for the taxable year.

shall be deemed to be income taxes paid or accrued in the two preceding or five succeeding taxable years, to the extent not deemed paid or accrued in a prior taxable year, and shall be allowable as a credit in the year in which it is deemed paid or accrued subject to the limitation in subparagraph (i).

"(iii) the provisions of subparagraphs (i) and (ii) shall apply separately, in the same way (but with the deletion, in the case of subparagraph (ii), of the words 'the lesser of (a)' and 'or (b) two percent of such income for the taxable year') to the amount of income taxes paid or accrued to Norway on:

"(a) Norwegian source oil related income not described in subparagraph (i); and

"(b) other Norwegian source income."

ARTICLE II

The following new Article 4A (Offshore Activities) shall be inserted after Article 4 (Permanent Establishment):

"ARTICLE 4A—OFFSHORE ACTIVITIES

"(1) Notwithstanding the provisions of Articles 4 (Permanent Establishment) and 13 (Independent Personal Services), a resident of a Contracting State who carries on activities in the other Contracting State in connection with the exploration or exploitation of the seabed and sub-soil and their natural resources situated in that other Contracting State shall be deemed to be carrying on in respect of those activities a business in that other Contracting State through a permanent establishment or fixed base situated therein.

"(2) The provisions of paragraph (1) shall no apply where the activities are carried on for a period not exceeding 30 days in the aggregate in any 12 month period. However, for the purpose of this paragraph, activities carried on by a person related to another person within the meaning of Article 7 (Related Persons) shall be regarded as carried on by the last-mentioned person if the activities in question are substantially the same as those carried on by that last-mentioned person.

"(3) Notwithstanding the preceding paragraphs, the provisions of Article 6 (Shipping and Air Transport) shall apply to profits derived by a resident of a Contracting State from the transportation by ship or aircraft of supplies or personnel to a location where activities in connection with the exploration or exploitation of the seabed and subsoil and their natural resources are being carried on in the other Contracting State, or from the operation of tugboats and similar vessels in connection with such activities.

"(4) Notwithstanding Article 14 (Dependent Personal Services), wages, salaries and similar remuneration derived by an individual who is a resident of one of the Contracting States from labor or personal services in connection with the exploration or exploitation of the seabed and sub-soil and their natural resources situated in the other Contracting State shall not be taxable in that other State to the extent such wages, salaries and similar remuneration are attributable to:

"(a) Labor or personal services performed in that other State for a period of 60 days in the taxable year; or

"(b) If that other State is Norway, labor or personal services performed on behalf of an employer who is a resident of the United States with respect to petroleum reservoirs which extend between Norway and any other State, provided that there is an agreement between Norway and that other State for joint exploitation of the reservoir and the exploitation is performed simultaneously in both States. This provision shall, however, only come into force by a separate agreement between the competent authorities of the Contracting States.

"(5) Wages, salaries and similar remuneration derived by an individual who is a resident of a Contracting State in respect of labor or personal services rendered aboard a ship or aircraft covered by paragraph (3) shall be taxed in accordance with paragraph (3) of Article 14 (Dependent Personal Services)."

ARTICLE III

Paragraph (1) of Article 6 (Shipping and Air Transport) shall be deleted and replaced by the following:

"(1) Notwithstanding Article 5 (Business Profits), income which a resident of the United States derives from the operation in international traffic of ships or aircraft shall be exempt from Norwegian tax."

ARTICLE IV

(1) Paragraph (2) of Article 8 (Dividends) shall be deleted and replaced by the following:

"(2) The rate of tax imposed by one of the Contracting States on dividends derived from sources within that Contracting State by a resident of the other Contracting State shall not exceed 15 percent of the gross amount actually distributed."

(2) Paragraph (4) of Article 8 (Dividends) shall be deleted and replaced by the following:

"(4) Dividends paid by a corporation of one of the Contracting States shall be exempt from tax by the other Contracting State except insofar as:

"(a) The recipient of the dividends is a resident of the other Contracting State;

"(b) In the case of dividends paid by a Norwegian corporation, the recipient of the dividends is a citizen of the United States;

"(c) The recipient of the dividends has a permanent establishment in that other State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment; or

"(d) In cases where that other State is the United States, such dividends are paid out of profits attributable to one or more permanent establishments which such corporation had in that other State, provided that such profits constituted at least 50 percent of such corporation's gross income from all sources.

"Where subparagraph (d) applies and subparagraphs (a), (b) and (c) do not apply, any such tax shall be subject to the limitation of paragraph (2)."

ARTICLE V

Article 9 (Interest) shall be deleted and replaced by the following:

"ARTICLE 9—INTEREST

"(1) Interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States; provided, however, that such interest shall be exempt in the first-mentioned State in any calendar year in which the other State exempts similar interest derived from sources within that State from taxation under its domestic law.

"(2) The rate of tax imposed by a Contracting State on interest derived from sources within that State by a resident of the other Contracting State shall in no event exceed 10 percent of the gross amount of the interest.

"(3) Notwithstanding the provisions of paragraph (2), interest derived from sources within one of the Contracting States by a resident of the other Contracting State shall in all events be exempt from tax by the first-mentioned State if:

"(a) The interest is beneficially owned by, or is paid by, a Contracting State, a political subdivision or local authority thereof or an instrumentality, sub-division or authority of a Contracting State which is not subject to tax by that State;

"(b) The interest is beneficially owned by a resident of a Contracting State with respect to debt obligations guaranteed or insured by that State, a political subdivision or local authority thereof or an instrumentality, subdivision or authority of such State which is not subject to tax by that State;

"(c) The interest is paid by a purchaser to a seller in connection with a commercial credit resulting from deferred payments for goods, merchandise or services;

"(d) The interest is paid with respect to a loan of any nature made by a bank; or

"(e) The interest is paid with respect to an obligation outstanding on the date of signature of this Protocol.

"(4) The term 'interest' as used in this Convention means income from bonds, debentures, Government securities, notes or other evidences of indebtedness, whether or not secured, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

"(5) Paragraphs (2) and (3) shall not apply if the beneficial owner of the interest, being a resident of one of the Contracting States, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, see paragraph (6)(a) of Article 5 (Business Profits).

"(6) Where any interest paid by a person to any related person exceeds an amount which would have been paid to an unrelated person, the provisions of this Article shall apply only to so much of the interest as would have been paid to an unrelated person. In such a case the excess payment may be taxed by each Contracting State according to its own law, including the provisions of this Convention where applicable.

"(7) Interest paid by a resident of one of the Contracting States to a person other than a resident of the other Contracting State (and in the case of interest paid by a Norwegian corporation, to a person other than a citizen of the United States) shall be exempt from tax by the other Contracting State. This paragraph shall not apply if:

"(a) Such interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 24 (Source of Income); or

"(b) The recipient of the interest has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment."

ARTICLE VI

(1) Paragraph (1) of Article 12 (Capital Gains) shall be amended by redesignating subparagraphs (b) and (c) as. respectively, (d) and (e), and by inserting after subparagraph (a) the following new subparagraphs (b) and (c):

"(b) The gain is derived by a resident of one of the Contracting States from the sale, exchange or other disposition of:

"(i) Stock of a corporation the property of which consists principally of real property situated within the other Contracting State; or

"(ii) An interest in a partnership, trust or estate the property of which consists principally of real property situated within the other Contracting State.

For the purposes of this subparagraph, the term 'real property' includes stock of a corporation referred to in subparagraph (b) (i) or an interest in a partnership, trust or estate referred to in subparagraph (b) (ii).

"(c) The gain is derived by a resident of one of the Contracting States from the sale, exchange or other disposition of stock of a corporation which is a resident of the other Contracting State, but only if:

"(i) The recipient of the gain owns within the 12 month period preceding such sale, exchange or other disposition more than 25 percent of the stock of that corporation; and

"(ii) More than 50 percent of the fair market value of the gross assets of that corporation used in its trade or business are physically located in the other Contracting State on the last day of each of the three taxable years preceding the sale, exchange or other disposition (or, if the corporation has been in existence for less than 3 years, on the last day of each preceding taxable year of the corporation)."

(2) Paragraphs (3) and (4) of Article 12 (Capital Gains) shall be deleted and a new paragraph (3) shall be inserted after paragraph (2):

"(3) In the case of gains described in paragraph (1) (a), see Article 11 (Income from Real Property). In the case of gains described in paragraph (1) (d), see paragraph 6(a) of Article 5 (Business Profits)."

(3) Paragraph (8) of Article 24 (Source of Income) shall be deleted and replaced by the following:

"(8) Income from gains described in paragraph (1) of Article 12 (Capital Gains), derived by a resident of a Contracting State but which may be taxed by the other Contracting State, shall be treated as income from sources within that other Contracting State."

ARTICLE VII

(1) Subparagraph (c) of paragraph (2) of Article 13 (Independent Personal Services) shall be deleted and replaced by the following:

"(c) The individual is a public entertainer, such as a theater, motion picture or television artist, a musician or an athlete, and the income is derived from his personal services as a public entertainer provided that he is present in that other Contracting State for more than a total of 90 days during the taxable year or such income exceeds in the aggregate 10,000 United States dollars or its equivalent in Norwegian Kroner during the taxable year."

(2) The following now Article 14A (Artistes and Athletes) shall be inserted after Article 14 (Dependent Personal Services):

"ARTICLE 14A—ARTISTES AND ATHLETES

"Where income in respect of activities exercised by an entertainer or an athlete in his capacity as such accrues not to that entertainer or athlete but to another person, that income may, notwithstanding the provisions of Articles 5 (Business Profits), 13 (Independent Personal Services), and 14 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised. For purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer or athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions."

ARTICLE VIII

Article 19 (Social Security Payments) shall be deleted and replaced by the following:

"ARTICLE 19—SOCIAL SECURITY PAYMENTS

"Social Security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned Contracting State. This Article shall not apply to payments described in Article 17 (Governmental Functions)."

ARTICLE IX

Paragraph (3) of Article 22 (General Rules of Taxation) shall be amended by adding after the first sentence thereof the following:

"For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of ten years following such loss."

ARTICLE X

Paragraph (2) of Article 23 (Relief from Double Taxation) shall be amended as follows:

(1) The first sentence of subparagraph (a) shall be amended by changing "subject to the provisions of subparagraphs (b) or (c) of this paragraph" to "subject to the provisions of subparagraphs (b), (c), or (d) of this paragraph".

(2) Subparagraph (c) shall be deleted and replaced with the following:

"(c) In determining its tax on a Norwegian corporation receiving dividends from a United States corporation in which it owns 10 percent or more of the stock, Norway shall allow a credit against the tax otherwise payable by the Norwegian corporation for that part of United States tax imposed on the profits of the United States corporation out of which the dividends were paid, in the proportion that the dividends received bear to the accumulated profits of the United States corporation in excess of that tax, provided that an amount equal to such credit is recognized by the Norwegian corporation as income in the year in which the dividend is received. Such credit shall not, however, exceed that part of the tax, as computed before the credit is given, which is appropriate to the income derived from sources in the United States under the rules set forth in Article 24 (Source of Income)."

(3) A new subparagraph (d) shall be added as follows:

"(d) Where a resident of Norway derives income which, in accordance with paragraph (1) of Article 4(A) (Offshore Activities), may be taxed in the United States, Norway may tax such income but shall allow as a credit against the tax in Norway on that income an amount equal to the tax paid in the United States. Such credit shall not, however, exceed that part of the tax as computed before the credit is given, which is attributable to the income which may be taxed in the United States."

ARTICLE XI

(1) Paragraph (4) of Article 27 (Mutual Agreement Procedure) shall be amended by adding at the end thereof the following:

"Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States."

(2) The following new paragraph (5) shall be added to Article 27 (Mutual Agreement Procedure):

"(5) Where any provision in this Convention specifies an amount in currency, the competent authorities may agree to adjust such amount upward in light of economic developments."

ARTICLE XII

Paragraph (3) of Article 28 (Exchange of Information) shall be deleted and replaced by the following:

"(3) The exchange of information shall be either on a routine basis or on request with reference to particular cases. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes."

ARTICLE XIII

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) This Protocol shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

(a) In respect of credits against United States tax allowed pursuant to Article I of this Protocol, as of the sixth taxable year preceding January 1 of the year in which this Protocol enters into force;

(b) In respect of tax withheld at the source, to amounts paid on or after the first day of the sixth month next following the date on which this Protocol enters into force;

(c) In respect of other taxes, for taxable years beginning on or after January 1 of the year following the year in which this Protocol enters into force.

DONE at Oslo in duplicate, in the English and Norwegian languages, both texts having equal authenticity, this 19th day of September, 1980.

FOR THE UNITED STATES OF AMERICA:

FOR THE KINGDOM OF NORWAY:

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